ZONING BOARD OF APPEALS

TOWN OF TICONDEROGA

zba.wps

Zoning Board of Appeals

Town of Ticonderoga
Ticonderoga, NY 12883

Zoning Board of Appeals Policy and Procedure

Who May Appeal

The enabling acts provide that any "person aggrieved" or "an officer, Department, Board or Bureau" of the municipality may appeal to the Zoning Board of Appeals (ZBA) from any order, requirement, decision, or determination of an official charged with the enforcement of zoning regulations.

The part who appeals may be either the one denied a permit or neighbors who object to the permit being granted. The matter appealed must be brought officially before the board through a pleading which sufficiently informs the Board of the relief which the party is seeking and sets for the jurisdiction of the Board.

Schedule of Appeal

The enabling acts for towns provide that appeals shall be taken to the ZBA within such time as is prescribed by the General Rules of the Board. In the Town of Ticonderoga, appeals must be filed with the ZBA within thirty days of a decision of the Ticonderoga Planning Board and/or building inspector. All applications to the ZBA must be filed with the Board not less than fourteen (14) days prior to the first Thursday of the month.

Contents of Appeal

The Notice of Appeal must state the ground on which the appeal is based. THE TICONDEROGA ZBA APPLICATION MUST BE USED. IT MUST BE COMPLETE WHEN FILED WITH THE ZBA.

The ZBA cannot decide on a case-by-case basis whether appeals have been brought within a reasonable time. The limitation of the time in which to perfect an appeal is necessary for the orderly enforcement of the Zoning Regulations.

Schedule Public Hearing

The ZBA will schedule a public hearing within thirty days of acceptance of a completed application. Town laws (6) require that notice of a public hearing be published and/or posted at least five (5) days in advance of the hearing date. Such notice shall be published in the Times of Ti and/or the Press Republican (official paper) and posted on a bulletin board used for such notices in the Ticonderoga Town Offices.

Adjacent property owners and other parties considered by the ZBA to be possibly interested in the appeal will be notified of the public hearing by certified mail. This shall be considered adequate notice by the ZBA.

The ZBA must refer certain variance applications to the Essex County Planning Board and the Ticonderoga Planning Board for comment. They are required to respond to the ZBA within thirty (30) days.

When Public Hearing is Held - Decision

A Public hearing must be held by the ZBA on every variance application. The ZBA must render a decision within sixty (60) days after the closing of the public hearing. The ZBA may adjourn the public hearing beyond the starting date to subsequent dates to enable it to acquire additional information and/or hear further testimony.

The ZBA must make a decision to grant, grant with conditions, or deny the variance application. This decision must be in writing and contain findings as to statutory requirements of practical difficulty or unnecessary hardship, plus the factual data upon which the decision is based.

The ZBA may also decide to hold an additional Public hearing to make its Decision.

Where Hearing Held

Public hearings and meetings of the ZBA are normally held in the Civic Center located on Champlain Avenue and the Portage in the Village of Ticonderoga. A public hearing before making decisions on variances, special permits, etc. is mandatory. Extenuating circumstances may necessitate holding the hearing in another location in the Town.

The hearing itself may be less formal than normal court proceedings, but a hearing must be held and it must be convened on the day and time set out in the notice.

Evidence - Burden of Proof

What evidence is received is up to the discretion of the ZBA. A careful record of all evidence introduced will be kept.

The part who is appealing to the ZBA has the burden of proof at the Public Hearing. This means that the party has the affirmative duty to convince the ZBA in favor of his (her) case; if not, the ZBA cannot decide in his (her) favor.

The enabling acts for towns authorize the ZBA Chairperson to administer oaths. Cross examination is used informally at ZBA hearings. Both the ZBA and the parties can examine and cross examine witnesses under the direction of the ZBA Chairperson to ensure the cross examination is being used for its intended purpose.

The questions asked during cross examination should be relevant to the line of questioning used in direct examination.

It is common practice for ZBA members to visit the property involved in applications being reviewed by the ZBA. These inspections may or may not be a part of the Public hearing.

It is also permissible for a ZBA member to use any personal knowledge of the community in making his (her) decision.

A party appearing before the ZBA may represent himself (herself), with an attorney, or choose to be represented by another party who is not an attorney.

LIKEWISE, THE ZBA MAY CALL UPON ITS LEGAL COUNSEL DURING THE PUBLIC HEARING OR AT OTHER TIMES.

THERE IS ALSO THE NECESSITY OF A QUORUM TO CONDUCT A PUBLIC HEARING OR MEETING.

Quorum - Voting

S41 or the general construction law defines a quorum as a majority or the whole number of a given Board. Thus, the ZBA must have three (3) of its five (5) members present to conduct Business. Three (3) concurrent votes are needed for the ZBA to reverse the Zoning officers or grant a variance. At a ZBA meeting of only three (3) members, for example, all three (3) person must vote to grant a variance.

Where the matter has been referred to the county planning board pursuant to S239-M of the General Municipal law and the county recommended that the action be denied or modified, the ZBA can grant the requested relief only upon a vote of a majority plus one.

ZBA Remain Fair

THE ZBA MUST REMAIN COMPLETELY IMPARTIAL AND UNINTERESTED IN THE MATTER BEFORE IT. Members may not assist parties seeking to appear before it or participating in a public hearing, compile or present evidence. The ZBA may only assist in ensuring the application is proper and complete.

A conflict of interest by a member of the ZBA is not assumed simply because a Board member has known or has previous dealings with a party, provided no personal interest in the case is shown and no actual interest is proved.

Decisions of the ZBA must be based on the evidence presented at the hearing and not on documents or other material not introduced at the hearing. In deciding the matter before it, a Board member is allowed to vote even if he (she) was not present at the public hearing on the matter.

Minutes will be kept by the ZBA of all examinations and official actions, in addition to voting. Every rule, regulation, amendment, order, determine, requirement, and decision of the ZBA is a public record and available with the ZBA clerk or town clerk. Every decision or determination of the ZBA should be filed immediately with the Town Clerk.

Rehearings

The ZBA rehear any decision, determination, or order not previously reviewed by the ZBA. A rehearing is started on the motion of a member of the ZBA to rehear. THE MOTION TO REHEAR MUST THEN BE ADOPTED BY A UNANIMOUS VOTE OF ALL ZBA MEMBERS PRESENT.

Town Law requires that the rehearing be held on the notice that was required for the original hearing.

The purpose of the rehearing could be to reconsider evidence that was submitted at the previous hearing. The ZBA can reconsider it previous decision without showing that circumstances have changed or that new facts have been discovered.

Revocation of Decision

The ZBA can revoke a variance or special permit perviously granted. To reverse or modify any previous decision, there must be a concurrence of all members of the ZBA.

The ZBA can only hold one rehearing on its own motion. Once it has reviewed a decision it can take no further action on its own motion. In reviewing a decision the ZBA must take no action which would prejudice any persons acting in good faith in reliance upon the earlier decision.

Subject to Court Review

Actions by the ZBA are subject to review by the courts to determine whether the ZBA acted within the limits of its authority, whether the standards imposed by statute and ordinance were respected, whether the procedural rights of the parties were observed, and whether the Board abused its discretion.

General Governing Rules Board Definitions

1.1.1 The ZBA shall be governed by the provisions of all applicable state statutes, local Laws, Ordinances, an these rules an procedures.

1.1.2 The term "Board" or "ZBA" as used in these rules shall mean the duly appointed Town of Ticonderoga Zoning Board or Appeals.

1.2.1 The Board shall become familiar with all the duly enacted ordinances and laws of the town under which it may be expected to act as well as with the applicable state statutes.

1.2.2 The Board shall become familiar with the community goals, desires and policies as expressed in a "comprehensive plan" and in rendering such decisions shall be guided by such plan and grant minimum relief which will ensure that goal and policies of the plan are preserved and substantial justice be done.

Membership, Officers, and Duties

2.1.1 Membership: Members of the Board and ZBA Clerk shall be appointed by the Town Board for Specified terms. The officers of the Board shall consist of a Chairman, vice-chairman (both voting members) and clerk (non-voting).

2.2.1 Chairman: The chairman shall be designated by the Town Board. He (she) shall perform all duties required by law, ordinance, and these rules. He (she) shall preside at all meetings (Public Hearings) of the Board. The chairman shall appoint any committee found necessary to carry out the business of the Board. The chariman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the ZBA.

2.3.1 Vice-Chairman: The vice-chairman will serve in the absence of the chairman. He (she) shall have all the powers of the Chairman during his (her) absence, disability, or disqualification.

2.4.1 Clerk: The clerk, subject to the direction of the chairman, shall keep minutes of all board meetings, public hearings or proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall keep records of all board examinations, meetings, public hearings and all other official actions or functions. In the absence of the clerk, the chairman may appoint an acting clerk.

2.5.1 Vacancies: Should any vacancy on the board occur for any reason, the clerk shall give immediate notice thereof to the town clerk for the town board.

2.5.2 Should a vacancy occur among the Officers of the ZBA, such office shall be filed by the town board.

2.5.3 Should the office of chairman become vacant, the clerk shall add such fact to the notice required in section 2.5.1 of these rules. The vice chairman shall handle the duties of the chairman until such time as the town board shall appoint a new chairman.

Meetings--Public hearings

3.1.1 Regular Meetings: The regular meeting of the ZBA shall be held on the first Thursday of each month at 7:00 P.M. in the Civic Center.

3.2.1 Special meetings: Special meetings of the ZBA may be called by the chairman. At lest 48-hours notice of the time, place and business of the meeting shall be given to each member of the Board, news media, and posted in the Club Center in an appropriate public notice area.

3.2.2 The Chairman shall call a special meeting within ten days of the receipt of a written request from any three (3) members of the ZBA, which request shall specify the matters to be considered at such special meeting. Other matters may also be considered.

3.3.1 Cancellation of Meetings: Whenever there are no appeals or applications for variance or other business at a regular meeting, the applications for variance or other business at a regular meeting, the Chairman may dispense with such meeting by notice to all members, news media, and pubic notice not less than twenty-four (24) hours prior to the time set for such meeting unless an emergency precluded such notice.

3.4.1 Proceedings: The order of business at regular meetings shall be as follows: (a) Pledge of Allegiance, (b) roll call by clerk, (c) reading and approval of minutes of preceding regular or special meetings (Public hearings), (d) Action on Held Cases, (e) Public hearings when scheduled, (f) Other business, and (g) Adjournment.

Voting

4.1.1 Quorum: A Quorum shall consist of a majority of the members of the Board which is three (3).

4.1.2 No hearing or meeting of the Board shall be held, nor any action taken, in the absence of quorum. all subsequent hearings shall be re-advertised in accordance with the requirements of the applicable law.

4.2.1 Voting: All matters shall be decided by roll call vote. Decisions on any matter before the ZBA shall require the affirmative vote of a majority of the Board unless otherwise specified herein.

4.2.2 A tie vote or a favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

4.2.3 No ZBA member shall sit in hearing or vote on any matter in which he (she) is personally or financially interested.

4.2.4 No member shall vote on the determination of any matter requiring public hearing unless he (she) has attended public hearing unless he (she) has attended public hearing therein. However, where such member has familiarized himself (herself) with such matters by reading the records, he (she) shall be qualified to vote.

Appeals and Procedures

5.1.1 Appeals: The ZBA shall hear and decide appeals from and review any order, requirement, decision, or determination by an administrative official (body) charged with the enforcement of any duly enacted ordinance and laws of the town under which it may be excepted to act as well as with applicable state statutes. Such appeal may be taken by any person aggrieved by any officer, department, board, or bureau of the town.

5.1.2 Appeals Filing: An appeal must be made within thirty (30) days of the action of the administrative official (body) appealed from. The applicant must file notice of

appeal with the clerk of the ZBA. Such notice shall be in the form (ZBA application) provided for that purpose. Such forms shall be available in the town clerk's office. All information required thereon shall be completed before an appeal is considered filed. Seven (7) completed copies of the proper appeal form shall be filed with the ZBA.

5.1.3 Fees: A fee of five dollars shall be deposited by check or money order in the name of the Town of Ticonderoga with the ZBA clerk for each appeal filed.

5.1.4 Amendments to appeals: Appeals may be amended fifteen (15) days prior to the public hearing thereon.

5.1.5 Notice to Applicant; The applicant shall be notified by letter within five (5) days of the hearing date on his (her) failure to complete his (her) application properly. An application may be found to be incomplete at the time of the public hearing.

5.1.6 Withdrawal: An application may be withdrawn by the applicant or designated representative at any time.

Public Hearing

6.1.1 Time of Hearing: The board shall schedule a hearing on all appeals within thirty (30) days of the filing of the completed appeal or application.

6.2.1 Notice of hearing: The Board shall give notice of the Public Hearing at least five (5) days prior to the date by publication in one of the official newspapers, posting in an appropriate place in the Civic Center, and notification to the news media. The Board shall be certified to mail and also send notices to parties to the application.

6.2.2 Notice of hearing: The Essex County Planning Board shall be notified of application at least thirty (30) days before any public hearing where variance applications fall within 500 feet of: (1) Boundary of any municipality; (2) county or state park or recreation area; (3) right-of-way of any county or state road; (4) ~~ay~~ county or state owned land on which a public building or institution is located.

6.3.1 Form of Notice: Such notice shall state name of applicant: location of building or lot; date; time and place of hearing; nature of the proposed action; statement that the hearing will be held pursuant to the rules of procedure adopted by the ZBA; the name, office address, and telephone number of the ZBA form whom more information can be obtained.

6.4.1 Proceedings: The order of business at a hearing will be according to Appendix I of this publication.

6.5.1 General Rules: Any party may appear in person or by alert or by attorney.

6.5.2 Oaths: The chairman, or in his (her) absence the vice chairman, may administer oaths.

6.6.1 Rehearing: Upon motion initiated by an member and adopted by unanimous vote of the members present, but not less than a majority of all the members, the Board can review at a rehearing any order, decision, or determination of the board, without any showing circumstances have changed or that new facts have been discovered.

6.6.2 An application for a rehearing shall be made in the same manner as provided for the original hearing.

6.63 Revocation: The Board can revoke or modify variances or special permits previously granted by concurrence of all members.

6.6.4 Rehearing Notice: Town law requires that the rehearing be held on the same notice that was required for the original hearing.

Decisions

8.1.1 Time of Decision: Decision by the Board shall be made no later than sixty (60) days from the date of the final hearing.

8.2.1 Form of Decision: The final decision on any matter before the Board shall be made by written order signed by the chairman; or in his (her) absence, the vice chairman (Section 2.3.1). Such decision shall state the findings of fact which where the basis for the Board's determination. After such determination, the Board may reverse or affirm, wholly or in part, or may modify the order or requirements of the administrative official appealed from. The decision shall also state any conditions any safeguards necessary to protect the public interest.

8.3.1 Basis For Decision: The Board in reaching said decision shall be guided by standards specified in the applicable ordinance as well as by community goals and policies as specified in a comprehensive plans and by the findings of the Board in each case.

8.3.2 Finding of Facts: The Board shall make the following findings prior to granting a variance for relief from the strict application of the zoning ordinance. The Board shall find that:

1. Strict application of the ordinance would produce undue hardship and that a hardship is not self-created.
2. The hardship is unique and is not shared by all properties alike in the immediate vicinity of the property and in the use district.
3. The variance would observe the spirit of the ordinance and would not change the character of the district.
4. The variance would observe the intent of the comprehensive plan.

5. The variance is the minimum necessary to grant relief.

8.3.3 Finds, Content: The finding of the Board and the supported facts shall be spelled out in detail regardless of whether it is based on evidence submitted or on the personal knowledge of the Board. the Board shall show that:

1. It has made an intelligent review of the question.
2. It has considered all of the information or evidence.
3. It has heard all the parties in question.
4. Any intimate knowledge it has of the subject has been taken into account.
5. It has made a personal inspection of the parallel in question and from this examination certain findings were ascertained.

8.3.4 Conflicts with other law or regulations: In reviewing any application on any matter, the standards in any applicable law or ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs in all other instances, the more restrictive rule shall apply.

8.4.1 Expiration of Permits: unless otherwise specified, any order or decision of the Board for a permit used shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of notification of decision; however, the Board may extend this time once to an additional ninety (90) days. Further requests for extensions will require initiating a new application process.

8.5.1 Filing of Decisions: Decisions of the Board shall be immediately filed in the office of the town clerk and shall be public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

8.5.2 Notice of Decision: Certified copies of the decision shall be forwarded to the applicant (by certified mail) and the town planning board; also, the Essex County Planning Board and the Adirondack Park Agency when referral to these agencies is required in particular cases.

8.5.3 Certification of Decision: A certified copy of the Board's decision including all terms and conditions shall be transmitted to the town administrative official (boy) and he (she) shall incorporate such terms and conditions of the same in the permit so the applicant or appellant whenever a permit is authorized by the board.

9.1.1 Adoption: Upon adoption of these rules by the Board, the clerk shall file a copy of these rules along with the ZBA application form with the town clerk making these rules public record.

9.2.1 Amendment: These rules may be amended by an affirmative vote of not less than three (3) members of the Board, provided that such amendment be presented in written form at a regular or special preceding the meeting at which the vote is taken.

9.3.1 Filing: All amendments shall be filed in the same manner for the rules in Section 9.1.1.

Guidelines Only

This publication is not intended to be a complete computation of all requirements, information, procedures and policies of the Zoning Board of Appeals. It is merely to be considered a tool or guideline to assist applicants and interested parties in the procedures and policies of the ZBA.

Important

Before making application, carefully read the Ticonderoga Town zoning Ordinance, The Zoning Board of Appeals Policies and Guidelines, and application instructions.

Note: IF YOUR APPLICATION IS INCOMPLETE, YOU MAY BE DENIED OR DELAYED. IT IS IMPORTANT THAT YOU ADDRESS ALL REQUIRED CRITERIA.

Appendix I

Prior to the hearing, the Chairperson:

____Calls session to order;
____Introduces board;
____States purpose of meeting;
____Notes posted meeting agenda;
____Notes availability of hearing subject materials;
____Cites statute or local ordinance authority;
____Notes availability of copies of zoning regulation and the ZBA's rules of procedure;
____Describes the hearing sequence;
____Clarifies when decisions will be made;
____Clarifies form of decisions;
____Explains procedure for appeal of decisions;
____Presents guidelines for audience testimony;
  ____At microphone or where all can hear;
  ____Those testifying must state name and address;
  ____Testimony must be relevant to the issue being heard;
____Notes access to exhibits for all attendees.

Hearing Procedure:

____Case number is called and identified;
____Participants come forward;
____Hearing is opened on the particular application and application is explained
____Participants may be sworn in;
____Referral reports may be presented (e.g., local and county planning board reports);
____Applicant testifies;
____Interested parties testify in support;
____Interested parties testify in opposition;
____Cross-examination and rebuttal;
____Board reviews questions;
____Hearing is closed, vote taken and decision announced; or hearing is closed, decision to be made within 60 days for towns or 62 days for villages.
____If there is to be a continuation... time, date and place for resumption is announced. (NYSDOS, Zoning Administration, the Inspector and the Board of Appeals, 1979)

STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N.Y. 12231-0001

GAIL S. SHAFFER
SECRETARY OF STATE

TOWN ZONING BOARD OF APPEALS

Guidelines for Applicants

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All applicants, or representatives of applicants, for relief before the Town Zoning Board of Appeals should be aware of the procedure involved in applying for and receiving a determination. First, an applicant must have received a formal decision or action by the enforcement officer as a prerequisite to taking an appeal before the Board. Second, the applicant or his representative must present proof under the applicable legal standards that is sufficient to allow the Board to grant relief.

The following questions and answers should help:

Q: Who may apply to the Board for relief?

A: Anyone who stands to be "aggrieved" (i.e., injured or harmed) by the decision of the enforcement officer. Commonly the "aggrieved" party is the property owner who has been refused a permit, but an "aggrieved" party could also be a neighboring landowner who believes the officer's decision in issuing a permit was improper and will injure him. Also, anyone who has received an enforcement action (such as a cease-and-desist order) is eligible to take an appeal to the Board.

Q: What types of relief can the Board grant?

A: Basically, the Board can grant (or deny) two types of relief. First, the Board may affirm, modify or reverse the decision of the enforcement officer, based on the evidence and testimony placed before the Board. Second, the Board may grant or deny a variance, based on a specific showing of practical difficulty or unnecessary hardship. Because of this range of powers the Board has, it is essential that the applicant or his representative know what type of relief to request when making application to the Board. If the applicant (either the landowner or a third party) believes the officer's decision was incorrect, the appropriate request is for a reversal. If the applicant landowner believes that the officer's decision may have been

correct, but that he (the landowner) can show either practical difficulty or unnecessary hardship in complying with the decision, then the appropriate request is for a variance. It is also possible for an applicant to make a request for a reversal, and, in the same application, ask for a variance if the reversal is not granted.

Q: What must the applicant be prepared to do?

A: When an application for relief is filed, the Board will notify the applicant of a hearing date. At any time before or during the hearing, or after the hearing if decision is postponed, the applicant may submit written evidence and/or argument supporting his case. Obviously, the sooner that written testimony or material is received, the more time Board members will have to consider the case and reach a proper decision. Preferably, written material should be submitted with the application, or as soon thereafter as possible, so that it can be sent to Board members prior to the hearing. Anyone else having an interest in the outcome of the case is also entitled and, in fact, encouraged, to submit written evidence as well.

At the hearing itself, the Board will offer the applicant and/or his representative the opportunity to present his case for relief. The applicant may testify himself, call his own witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the Board will offer the Town an equal opportunity to present its side of the case. Each side will be given the opportunity to question the other, or the other's witnesses. In addition, the Board members themselves may ask questions. After the applicant and the Town have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed. At this point, the Board may begin discussing the case, reach a decision, or may postpone a decision until a later meeting. If the Board deems it necessary, the hearing may be reopened, either at that same session or at a later date. Once the hearing is finally closed, the Board must issue its decision within 60 days.

Burden of Proof

The applicant for relief should be prepared to make a case for relief under the rules established by the laws and the courts of New York State. If requesting a simple reversal, the applicant must prove that the enforcement officer's decision was incorrect according to a proper interpretation of the Town Zoning Regulations.

If requesting a use variance, that is, permission to establish a use of his property not otherwise permitted in his zoning district, the applicant must prove "unnecessary hardship". That is, he must show:

(a) that the property is incapable of earning a reasonable return on

investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);

(b) that the property is being affected by unique or at least highly uncommon circumstances;

(c) that the variance, if granted, will not alter the essential character of the neighborhood; and

(d) that the spirit and intent of the Zoning Regulations will be preserved.

If requesting an area variance, that is, the permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then the applicant must prove "practical difficulty". "Practical difficulty" is proven when the applicant shows that the property stands to suffer economic injury if the variance is not granted, and that this economic injury is significant in relation to the public benefit served by the particular ordinance restriction which is at issue. The applicant must also be prepared to show, if required, that the variance will not adversely affect services and facilities, the character of the neighborhood, and the overall interests of justice. The Board may decide that a lesser variance than the one requested would be appropriate, or may decide that there are other means available to the applicant which would not require a variance.

It is highly important that the potential applicant understand and appreciate the above rules and standards under which appeals and variance decisions must be made by a board of appeals. These standards have been set forth in law and by the courts of the State, and if not followed, would subject the Town to costly lawsuits. Too often, an applicant will appear before the Board and offer only generalized conclusions that his proposed project will "look nice" and that it won't bother his neighbors. This isn't enough. It puts the Board in the position of having to guess what the relevant facts are, and whether the applicant is really presenting true hardship, difficulty, or a case for reversal. The Board therefore urges all applicants, or their representatives, to become familiar with the applicable standards, to be guided by them in deciding whether an appeal would be appropriate, and to present clear, definite facts showing that the standards have been met. While the Board will offer full assistance to applicants who may be unfamiliar with the procedure itself, the Board cannot grant relief where proper legal proof is not adequately presented.