

## **Section 16 Variances and Interpretations**

### **16.1 Purpose**

This Section establishes a procedure for variations from the terms of this ordinance which are still in harmony with the general purposes and intent of the ordinance. This Section also provides a process for appeals of decisions made by administrative officials and appeals of interpretations of zoning maps.

### **16.2 Powers of the Board**

#### **16.2.1 Variances**

1. The Board of Adjustment (often called the BOA) may vary certain requirements of this ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
2. The Board of Adjustment may also grant variances in the following special circumstances, as indicated elsewhere in the ordinance:
  - a. Reconstruction, rehabilitation, or restoration of structures that are individually listed or are contributing structures within an historic district (Section 5).
  - b. Construction, reconstruction, or repair of structures in a flood hazard area (Section 11).
  - c. Construction, reconstruction, or repair of structures which are nonconformities that meet the requirements for Nonconformities. (Section 19).
3. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this ordinance.

#### **16.2.2 Ordinance Interpretations**

Any requirement, decision, or determination pertaining to this ordinance made by any administrative official may be appealed to the Board of Adjustment. The appeal may be made by the aggrieved party or an agent for the aggrieved party.

#### **16.2.3 Zoning Boundary Interpretations**

When uncertainty exists regarding the precise location of boundaries of zoning districts, an appeal may be made to the Board of Adjustment for a determination of the exact location. Requests for interpretation may be made to the Board of Adjustment by any interested party.

### **16.3 Procedures**

#### **16.3.1 Application**

Application forms are available in the City-County Planning Department. Completed applications shall be submitted to the Planning Department along with information specified in the application and the filing fee. Pre-filing meetings with staff are recommended. Appeals of ordinance interpretations shall be filed no later than 30 days after the contested decision is made. The filing of any appeal application shall stay all proceedings of the contested action unless the Director of Inspections determines that a stay would cause imminent peril to life and property.

#### **16.3.2 Notice and Hearing**

The staff shall review the application to assure that it is complete. Completed applications will be scheduled for a public hearing with the Board of Adjustment. A notice of the time and place of the public hearing shall be published twice in a newspaper of general circulation in the County. The first notice shall be published not less than 10 days nor more than 25 days prior to the date of the hearing. A mailed notice indicating the time and place of the hearing and the nature of the request shall be mailed to the applicant, property owner and all property owners within 300 feet of the property under consideration. The property may also be placarded with a notice of the hearing. Addresses for notification shall be the most recent address available from the County tax abstracts.

#### **16.3.3 Action by the Board of Adjustment**

The Board of Adjustment prior to the public hearing, shall receive the application and copies of any records pertaining to the application. The Board may take action at the public hearing or at a subsequent meeting. Each decision shall be accompanied by a finding of fact by the Board which specifies the reasons for the decision. Decisions of the Board of Adjustment to approve a variance or reverse an interpretation require a 3/5th vote of the Board.

1. ***Variance Procedure***

In case of variances, the Board of Adjustment may deny the application, hold the application for additional information, or approve the application. In approving the variance, the Board may prescribe reasonable and

appropriate conditions which will assure that the use will be compatible with adjacent properties and will not alter the character of the neighborhood. The Board may not grant a variance to allow a use which is not already permitted in the district involved. Variances may be granted for, among other things, height, structure size, lot dimension, setback, and floor elevation in flood areas.

2. ***Ordinance Interpretation Procedure***

In the case of an ordinance interpretation application, the Board of Adjustment may reverse, affirm or modify the decision of an administrative official by a 3/5ths vote. In the event that the Board of Adjustment reverses or modifies the decisions of an administrative official, all similar and subsequent actions by the administrative officials shall be in accordance with the decision. Records shall be kept of all interpretational decisions.

3. ***District Boundary Interpretation Procedure***

In case of a dispute in the location of a district boundary, the Board of Adjustment may determine the exact location of the boundary. Records shall be kept of the interpretation and the action shall be noted on the Official Zoning Map.

## **16.4 Findings**

### **16.4.1 General Findings of Fact**

In granting any variance, the Board of Adjustment shall make the following findings:

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.
2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Inspections Department before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.
3. That the strict enforcement of this ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this ordinance.
4. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this ordinance denies to other land, structures, or uses in the same district, and it will be the minimum variance necessary to provide relief.
5. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.
6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.
7. That the variance will not result in the expansion of a nonconforming use.

In making the findings above, the Board of Adjustment may give special weight to the number and/or percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board may grant a variance to expand an existing structure, including the expansion of a nonconforming feature that would otherwise be disallowed under Section 19.7, without making findings (1) and (4) above if the remaining findings can be made.