

ARTICLE 6 VARIANCES

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6.1 VARIANCES

6.1.1 Intent

The intent of this Article is to provide for appeals from decisions made by an administrative official charged with the enforcement of the Zoning Ordinance. The Zoning Board of Appeals, charged with discretionary powers to meet specific cases of hardship or instances of improper classification, is not intended to undermine zoning as a policy, but to maintain the essential community protections while allowing for necessary adjustments to site-specific conditions.

6.1.2 Delegation to Zoning Board of Appeals

The Zoning Board of Appeals (ZBA) is hereby charged with the responsibilities of administering and carrying out the intent established in ~~Section 8.1~~ above this section.

6.1.3 Appellate Authority

The jurisdiction of the ZBA shall be appellate only, except for the limited circumstances set forth below, and shall be limited to hearing and deciding appeals from any person aggrieved by any decision made by the administrative official charged with the enforcement of the Zoning Ordinance. An applicant may only apply directly to the ZBA without having to first apply to the zoning enforcement officer for a permit solely where area variances are necessary in the course of subdivision, site plan and special use permit applications.

6.1.4 Area Variance

An area variance provides relief from the dimensional or physical requirements imposed by the applicable zoning regulations. An area variance does not authorize any change in the type of use of the property.

- A. Evaluation Criteria.** In making its determination whether to grant an area variance, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by

such grant. In making such determination, the ZBA shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of an area variance.

independent third-parties, the reasonable cost of which shall be borne by the applicant.

B. In considering the basis for determining whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties would be created by the granting of the area variance, the ZBA shall consider these among other factors the board deems appropriate:

1. The overall intent and specific design considerations listed in Article 2 for that district.
2. The desired neighborhood density and character as described in the comprehensive plan and this ordinance.
3. The character, mass and scale of adjacent properties including those across a street or alley.
4. Other factors that contribute to defining the neighborhood character as determined by the ZBA.

C. In considering whether the proposed variance will alter the essential character of the neighborhood, the ZBA shall not only consider the subject property but the potential induced effect of allowing such variance to set a pattern for future development that would, in time, alter the neighborhood's character.

D. The ZBA is authorized to request additional information which would assist it in making a determination, such as design visualizations; an analysis of neighborhood massing or architectural context; or review input from

6.1.5 Use Variance

A use variance provides relief to allow the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations.

A. Evaluation Criteria. The ZBA shall not grant a use variance unless the applicant has demonstrated that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant must demonstrate that for each and every permitted use for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood;
4. The alleged hardship has not been self-created.

B. In considering the basis for determining the essential character of the neighborhood, the ZBA shall consider these among other factors the board deems appropriate:

1. The overall intent and specific design considerations listed in Article 2 for that district.
2. The desired neighborhood density and character as described in the comprehensive plan and this ordinance.
3. The land use and character of adjacent properties including those across a street or alley.
4. Other factors that contribute to defining the neighborhood character as determined by the ZBA.

C. In considering whether the proposed variance will alter the essential character of the neighborhood, the ZBA shall not only consider the subject property but the potential induced effect of allowing such variance to set a pattern for future development that would, in time, alter the neighborhood's character.

D. The ZBA is authorized to request additional information which would assist it in making a determination, such as design visualizations; an analysis of neighborhood uses

and intensity; traffic and parking estimates or review input from independent third-parties, the reasonable cost of which shall be borne by the applicant.

6.1.6 Minimum Variance

The ZBA, in granting a use or area variance, shall grant the minimum variance that it shall deem necessary and adequate while, at the same time, preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.

6.1.7 Conditions of Approval

The ZBA, in granting a use or area variance, shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

6.1.8 Interpretation Appeals

An interpretation is an appeal by an aggrieved party seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance.

6.1.9 Compliance

The granting of any appeal from a specific requirement of this ordinance shall not obviate the necessity of complying with all other applicable provisions of this ordinance in every other respect.

6.2 ~~VARIANCE AND INTERPRETATION~~ APPEALS PROCEDURE

6.2.1 Administrative Decision

- A.** Each decision of the administrative official charged with the enforcement of this Zoning Ordinance shall be filed in the office of such official within five (5) business days from the day it is rendered and shall be a public record.
- B.** An application for appeal shall be submitted by an

aggrieved person within sixty (60) days of the filing of any such decision.

6.2.2 Application for Appeal

- A. Applications for appeals shall be on forms prescribed by the ZBA and shall be accompanied by a fee as established by the City Council. Every appeal shall specify the grounds for appeal and the requested relief or interpretation sought. Copies of Appeals applications may be obtained from the city website, under Zoning Department. ## Note: Currently it appears this application is not yet available.
- B. The ZBA shall not accept any application for appeal that includes a parcel for which there is an outstanding, unresolved written violation from the Zoning Officer that is not the subject of the appeal.
- C. An appeal shall stay all enforcement proceedings relating to any violation under appeal unless the administrative official charged with the enforcement of the Zoning Ordinance finds that such stay would cause imminent peril to life or property.

Note: The following subsection shall be deleted and moved into existing city code chapter 51 related to the ZBA function.

6.2.3 Meetings

~~Meetings shall be held at the call of the Chairman or as the ZBA may determine. A quorum shall consist of 4 members. The ZBA shall keep minutes of its proceedings showing the vote of each member upon every action and shall keep records of its deliberations and decisions.~~

Note: Recommend that the notification and public hearing requirements below be replaced by or supplemented with a single-page reference chart in the UDO which describes these notification requirements for all similar actions such as Special Use Permits, etc.

6.2.4 Public Hearing Notice and Referrals

- A. The ZBA shall schedule a public hearing on an application for an appeal. ~~and shall provide notice as follows.~~

- B. A Public Hearing shall be scheduled, with notifications and referrals as specified in Article 5.2.

Note: Remainder of the Public Hearing Notice and Referral requirements from this section have been moved and combined into a common section 5.2

6.2.5 Decisions

- A. In rendering its decision on any application, the ZBA shall comply with all applicable provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.
- B. The ZBA shall decide an appeal within sixty-two (62) days after the close of the required public hearing. This time frame may be extended by mutual consent of the applicant and the ZBA.
- C. Four (4) affirmative votes are required to pass a motion regarding an appeal before the ZBA. The ZBA may amend a motion that fails to receive four affirmative votes within this 62-day period. Ultimately, if four affirmative votes cannot be attained on a motion within this 62-day period, unless extended by mutual consent of the applicant and the ZBA, the appeal shall be denied by default.
- D. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed project. As a condition of approval, the ZBA may require a letter of credit or equivalent security approved by the City to guarantee satisfactory performance of all required improvements.
- E. Every ZBA decision shall be signed and dated by the Chairperson and shall document the circumstances of the case and the findings on which the decision is based.
- F. Every ZBA decision of an appeal shall be by Resolution and shall be filed in the Office of the City Clerk within five (5) business days thereof and a copy provided to the applicant and to the Building Department.
- G. In order to rehear an appeal previously determined by the ZBA, the following must occur:
1. A ZBA member must move to formally rehear the

appeal.

2. A unanimous vote of all ZBA members present must approve the motion to rehear.
3. The appeal shall be subject to the same notice provisions as an original hearing.
4. The ZBA may reverse, modify or annul its original decision provided the ZBA finds that the rights vested in persons acting in good faith reliance upon the reheard order, decision or determination will not be prejudiced thereby.
5. A unanimous vote of all ZBA members present is required to reverse, modify or annul its original decision.

6.2.6 **Expiration and Extensions**

- A. Unless otherwise specified or extended by the ZBA, a variance approval shall expire 18 months following the filing date of such decision if the applicant has not complied with any required conditions and started actual construction, or otherwise implemented this approval. Actual construction is defined as the fastening or placing of construction materials in a permanent manner, the excavation of a basement, or the demolition or removal of any existing structure if no new construction is approved.
- B. The ZBA may grant up to two 18 month extensions for an approved variance provided that the application for extension was properly submitted prior to the expiration date of either the original variance or the first extension. When requesting an extension, it shall be the applicant's responsibility to prove that there have been no significant changes to the site or neighborhood and that the circumstances and findings of fact by which the original approval was granted have not significantly changed.