

VARIANCES

The Planning and Zoning Board and Zoning Administrator may authorize the variance from the provisions of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter, the Planning and Zoning Board or Zoning Administrator will consider the variance criteria in § 158.295 (C) 1-7 and consider your responses to the following when making a determination.

(1) Please explain special conditions and circumstances that exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

(2) Please explain if these conditions and circumstances result from actions by the applicant;

(3) Please explain how granting the variance requested will not confer on the applicant special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district;

(4) Please explain how a literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant;

(5) Please illustrate and explain if the variance requested is the minimum variance that will make possible the reasonable use of the land, building, or structure;

(6) Please indicate how granting variance will be in harmony with the general intent and purpose of the chapter and that granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

(7) Please indicate that there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.

Signature of Applicant

Print Name

Date

VARIANCES

§ 158.295 PLANNING AND ZONING BOARD OR ZONING ADMINISTRATOR (DIRECTOR OF PLANNING AND ZONING) TO HEAR VARIANCES; POWERS AND DUTIES OF BOARD AND ZONING ADMINISTRATOR

(A) The Planning and Zoning Board or Zoning Administrator shall hear and consider requests for variances from the provisions of this chapter.

(B) (1) The Zoning Administrator has the authority to hear and decide the following administrative variances:

(a) Variances of less than 36 inches (3 feet) to height and front, rear and side yard setbacks for existing structures. Such an administrative variance does not permit reconstruction of a destroyed structure;

(b) Variances of less than 36 inches (3 feet) to front, rear and side yard setbacks for existing accessory structures. Such an administrative variance does not permit reconstruction of a destroyed accessory structure;

(c) Variances to the parking requirements contained in § 158.221 by no more than two spaces. These two spaces may not include any required handicapped spaces.

(d) Variances of 6 inches or less to height restrictions and front, rear and side yard setbacks for existing main, or accessory structures shall be approved at the discretion of the Zoning Administrator without formal application.

(2) The Planning and Zoning Board is authorized to hear and decide all other variances; including any referred to it pursuant to § 158.298(D) of this chapter.

(C) Duties of the Zoning Administrator and Planning and Zoning Board in authorizing a variance. The Planning and Zoning Board and Zoning Administrator may authorize the variance from the provisions of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter, the Planning and Zoning Board or Zoning Administrator should consider:

(1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

(2) That the special conditions and circumstances do not result from any action of the applicant;

(3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district;

(4) That literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant;

(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;

(6) That the granting of the variance will be in harmony with the general intent and purpose of the chapter and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

(7) That there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.

§ 158.296 ALLOWABLE VARIANCES; USE VARIANCES PROHIBITED

(A) A variance is authorized only for height, area, and size of structure, yard size, building setback, lot size requirements, and other applicable development regulations, excluding use.

(B) In its consideration of a request for variance, the Planning and Zoning Board or the Zoning Administrator shall not utilize the existence of nonconforming use of neighboring lands, structures, or buildings in the same or adjacent zoning districts as grounds for the granting of a request for variance, nor shall the Planning and Zoning Board or the Zoning Administrator utilize any permitted use of lands, structures, or buildings within the same or adjacent zoning districts as a basis for approval.

(C) No variance or approval of use shall be granted so as to permit a use not specified as a permitted use or permissible as a special exception use within this chapter for the particular zoning district involved.

§ 158.297 APPLICATION FOR VARIANCE

(A) Application Limitations.

(1) No application for a variance shall be accepted for filing if all or any portion of the land which is the subject of the application was part of a previous application meeting any of the following conditions:

(a) An application denied by the Planning and Zoning Board or by the Zoning Administrator for the same variance within the previous 12-month period, where the applicable circumstances relating to the variance have not changed;

(b) An application allowed to be withdrawn by the planning and Zoning Board or by the Zoning Administrator within the previous 12-month period and relating to the same variance, where the applicable circumstances relating to the variance have not changed.

(2) The time limits set forth above may be waived by the Planning and Zoning Board or by the Zoning Administrator when the action is necessary to prevent injustice or to facilitate the proper development of the city.

(B) Application Requirements. Application for all variances shall be filed with the Zoning Administrator upon a standard form as may be provided therefor and shall include all necessary information and drawings as may be required to clearly describe the nature and extent of the variance sought. The applicant shall be required to pay any fee as may be established to defray processing costs relative to the review and hearing of the application.

§ 158.298 PUBLIC HEARING

(A) Hearing Required. Before making its decision on a request for variance, the Planning and Zoning Board shall hold a public hearing thereon.

(B) Notification Requirements. The following notification procedures shall be utilized with respect to appeals, and requests for variances;

(1) Requests for variances filed in proper form shall be numbered serially, docketed, and placed upon the agenda of the Planning and Zoning Board. Having thus been established, the agenda of the Planning and Zoning Board shall be posted as soon as practical upon a public notice board normally utilized for such notice within the offices of the city.

(2) Notice of public hearings shall be published at least seven days prior to the hearings, in a newspaper of general circulation in the city. The notice shall include the dates, times, places, and locations of hearing, and shall contain a description of the relief or action sought and the subject property.

(3) In addition to the required notices heretofore set forth, other methods of notification may be utilized by the Planning and Zoning Board at its option. These methods may include, but not be limited to, mail notification to owners of property within a maximum of 300 feet to property forming the subject of the public hearing, and notice may be posted upon the property which is the subject of the public hearing. The Zoning Administrator is authorized to post any notice upon property, and it shall be unlawful for any person to remove or tamper with that notice during the time period as may be established for the maintenance of the notice.

(C) Conduct of Hearings. Any interested person shall have the right to submit oral or written testimony at the hearings. All testimony and exhibits submitted at the hearing, including the request for variance, shall be incorporated into the application file and shall be considered a part of the record on the application. Evidence which is immaterial, irrelevant, or unduly repetitious may be excluded. The hearings may be adjourned from time to time to dates established by public announcement at those hearings and shall be the earliest practical date for resumption of the hearings.

(D) Before making his/her decision on a request for an administrative variance, the Zoning Administrator shall notify adjacent property owners within 300 feet of the site in question. If a written objection is received from adjacent property owners within 30 days of the notice, then the variance shall be heard and decided by the Planning and Zoning Board. In addition, the Zoning Administrator, at his/her discretion, may forward any variance request to the Planning and Zoning Board for final action.

§ 158.299 REQUIREMENT FOR DECISION BY PLANNING AND ZONING BOARD

A decision by the Planning and Zoning Board with respect to a request for a variance shall be rendered within 60 days following the close of the public hearing thereon. A vote of approval by five members of the established Planning and Zoning Board is required to grant a variance from this chapter. All decisions of the Planning and Zoning Board shall be made in open session and the action embodying the decision approving, denying, or dismissing any application shall not be valid unless it is incorporated into the minutes of the meeting at which the action is taken. A decision of the Zoning Administrator with respect to an administrative variance shall be rendered within 30 days following expiration of the time period which adjacent property owners had to object. A record of all actions taken by the Planning and Zoning Board and by the Zoning Administrator shall be maintained within the office of the Zoning Administrator.