

ARTICLE XIV. ZONING VARIANCE

Sec. 1400. Variances.

All requests for a variance from the terms of the Zoning Code relating to setbacks, distance requirements between buildings or other substantially similar dimensional regulations, parking, or accessory structures, except when requested as part of a rezoning, shall be heard by the mayor and council as established by city ordinance.

(Ord. No. 2005-34, 8-1-05; Ord. No. 2021-08 , 4-19-21)

Sec. 1401. Variance petitions.

- (a) *Filing of petition.* Variance petitions to the mayor and council may be filed by any person aggrieved by the literal enforcement of the requirements of the Zoning Code. Upon receipt of written petition and filing fee, the city administrator, or his designee, shall, within 30 days, schedule a hearing to consider the petition and shall notify the petitioner of such hearing.
- (b) *Requirements of petition.* The following information must be provided with each variance petition:
 - (1) Location of property, to be identified by land lot number, street address, and present zoning classification. Also, general descriptive information such as major streets or other well-known landmarks.
 - (2) Zoning classification of all adjoining property.
 - (3) A comprehensive summary detailing the extraordinary and exceptional conditions which will necessitate a nonconforming use.
 - (4) A copy of any existing plat of the property.
 - (5) Signature of the subject property owners or in the case of a corporation a duly authorized officer.
 - (6) A to-scale site plan, if constructing a new structure or an addition to an existing structure on the subject property.
 - (7) An elevation, rendering or photographic example of the structure, if constructing a new structure or an addition to an existing structure on the subject property. Also, a brief description of building and exterior materials proposed for the structure must accompany elevation, rendering or photographic example.
- (c) *Filing fee.* A filing fee, as determined by the governing body, must accompany each request. A schedule of filing fees approved by the governing body shall be maintained by the city administrator or his designee.
- (d) *Procedure.* The petitioner shall bear the burden of demonstrating to the board that the evidence on the record meets the standards outlined in section 1403.

(Ord. No. 2005-34, 8-1-05; Ord. No. 2008-2, 1-22-08; Ord. No. 2021-08 , 4-19-21)

Sec. 1402. Notification required.

- (a) The building inspector shall cause to have posted, in a place conspicuous to the nearest public roadway on said property, one or more signs, each of which shall not be less than six square feet in area, and each of which shall indicate that a variance petition has been filed and shall contain the date and time and place of the public hearing. No such public hearing shall take place until said signs have been posted for at least 15 days.
- (b) The petitioner shall notify all adjacent and abutting property owners by delivering a copy of the variance petition by hand delivery or by certified mail with return receipt requested. For the purposes of this section, adjacent shall also include parcels separated by a publicly dedicated right-of-way. Proof of such notice shall be provided to the city administrator or his designee prior to the hearing. Proof that certified mail was properly sent will be sufficient evidence of notification.

(Ord. No. 2005-34, 8-1-05; Ord. No. 2008-2, 1-22-08)

Sec. 1403. Variance review standards.

In rendering its decisions, the mayor and city council shall consider the following factors:

- (1) Whether there are unique and special circumstances or extraordinary and exceptional conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district.
- (2) Whether any alleged hardship is self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions from which relief is sought.
- (3) Whether strict application of the relevant provisions of the Zoning Code would deprive the applicant of reasonable use of the property for which the variance is sought.
- (4) Whether the variance proposed is the minimum variance, which makes possible the reasonable use of the property.

(Ord. No. 2005-34, 8-1-05; Ord. No. 2021-08 , 4-19-21)

Sec. 1404. Conditions and limitations.

In authorizing any variance the mayor and city council shall include as a part of such variance, any condition, requirements or limitations which the board may believe to be necessary and desirable to protect adjacent properties and the surrounding neighborhood, and to carry out the spirit and purpose of the Zoning Code.

(Ord. No. 2005-34, 8-1-05; Ord. No. 2021-08 , 4-19-21)

Sec. 1405. Time limit.

Any variance granted shall expire whenever the nonconformity for which it has been granted is discontinued or abandoned. If a variance is not acted upon within 12 months of its approval, it shall expire.

(Ord. No. 2005-34, 8-1-05)