

ARTICLE XII. VARIATIONS

SECTION

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Sec. 150.1201 Authorization.

The Zoning Board of Appeals, after a public hearing, may determine and vary the regulations of this Chapter in a manner consistent with the general purpose and intent of the Zoning Ordinance so that such variances as may be granted will not be contrary to the public interest. Furthermore, such variations may be authorized only in those specific instances enumerated in Section 150.1204 of this Article, and then only after the Zoning Board of Appeals has made findings of fact based upon the standards set forth in Section 150.1205, which findings indicate that, because of specific conditions, a literal enforcement of the provisions of this Chapter will, in such an individual case, produce practical difficulties or a particular hardship for the petitioner.

Sec. 150.1202 Application for Variation.

(A) The petitioner shall file an application for a variation with the Zoning Administrator on forms provided by the Zoning Administrator, who shall forward a copy without delay to the City Clerk for processing of payment and preparation and publication of legal notice.

(B) The application for a variation shall contain the following information, as well as such additional information as may be prescribed by rule of the Zoning Board of Appeals:

- (1) The present zoning of the subject property;
- (2) The present use of the subject property;
- (3) The particular requirements of this Chapter which prevent the proposed use or construction;
- (4) The characteristics of the subject property which prevent compliance with the requirements of this Chapter;
- (5) The minimum variations which would be necessary to permit the proposed use or construction;

(6) The practical difficulty or particular hardship which would result if the requirements of this Chapter were applied to the subject property and/or to the proposed use or construction thereon;

(7) A legal description of the subject property;

(8) The commonly known location (address) of the subject property;

(9) The name and address of the legal owner of the subject property;

(10) The name and address of the petitioner and his attorney, if any; and

(11) Plans, photographs of existing conditions of the subject property, and other data.

(C) All applications shall be verified by the applicant.

(1) In the event application is made by the trustee or beneficiary of any land trust, the application shall identify each beneficiary of such land trust by name and address and define and identify such beneficiary's interest therein.

(2) Each application shall be governed by additional administrative procedures as may be prescribed by the Zoning Board of Appeals.

(D) In addition to the requirements of an application for variation pursuant to Subsections (A), (B), and (C) of this Section, an application for variation from a subdivision setback line shall also contain evidence of the following:

(1) Notification of the request for relief to all property owners of any lot that is (i) within the same subdivision as the subject property, and (ii) immediately adjacent to the subject property on which the proposed variation from the Subdivision Setback Line is sought; and

(2) Written consent expressly stating no objection to the proposed variation from all property owners of any lot that is (i) within the same subdivision as the subject property, and (ii) immediately adjacent to the subject property on which the proposed variation from the Subdivision Setback Line is sought; and

(3) A fully executed and recordable hold harmless agreement, on a form approved by the City's Corporation Counsel, releasing the City from any liability that may in any way be related to the City's decision, if any, to permit variation from the Subdivision Setback Line. (Ord. 15-05, J. 31, p. 028-029, passed 2/28/05)

(E) At the time of filing, the application for a variation shall be accompanied by:

(1) Proof of ownership or current contract to purchase or lease the subject property, accompanied by proof of authority to file the application of behalf of the owner, since only persons owning or having interest in the subject property may file an application for a variation;

(a) Each application shall be signed by the owner of record of the subject property; and

(b) If the application is made by the trustee or beneficiary of a land trust, the application shall identify each beneficiary of such land trust by name and address and identify such beneficiary's interest therein.

(2) Payment of filing fees:

(a) An application fee equal to the amount established from time to time by resolution adopted by the City Council and maintained in the office of the Zoning Administrator; and

(b) (Repealed by Ord. 46-02, J. 28, p. 348-351, passed 7/22/02)

Sec. 150.1203 Processing, Notice, and Hearing.

(A) Upon receipt by the Zoning Administrator of a complete application for variation that has been duly filed, the Zoning Administrator shall assign a case and/or docket number to the application, shall schedule the matter for hearing before the Zoning Board of Appeals, and shall maintain a file for such application, which file shall be open to the public for inspection during regular business hours. All documents pertinent to the case (including but not limited to the application, legal notice, evidence, transcript of proceedings, etc.) shall be placed in the file.

(B) Not more than ninety (90) days after the filing of an application, a hearing shall be held on the application.

(C) Not more than thirty (30) days nor less than fifteen (15) days before the hearing date on which the application for variation is to be considered, the City Clerk shall cause notice thereof to be published in one or more newspapers published in the City, or, if no newspaper is published within the City, then in one or more newspapers with a general circulation within the City. In addition to such published notice, not more than thirty (30) days nor less than fifteen (15) days before the hearing, the applicant, his agent or attorney must notify either in person or by certified mail (return receipt requested) the owners of all property adjoining and/or across a public right-of-way from the legal boundaries of the subject property. Proof of such notification must be presented at the hearing. The notices required in this Section shall contain:

- (1) The legal description of the subject property;
- (2) The address of the subject property;
- (3) A brief statement of the nature of the requested variation;
- (4) The name(s) and address(es) of the legal and/or beneficial owner(s) of the subject property;
- (5) The name(s) and address(es) of the petitioner(s);

(6) The name of the legal representative of the petitioner(s), if any; and

(7) A statement of the date, time, and place of the hearing for which the notice is being given.

(D) Prior to the hearing, the Zoning Administrator shall also cause one or more signs to be posted on the subject property.

(1) The number and location of signs shall be determined by the Zoning Administrator.

(2) Each sign must be a minimum of 24 x 24 in size, have letters a minimum of 3/8" wide stroke by 2-1/2" high, and contain the following information:

(a) The fact that a public hearing will be held regarding the subject property, with direction to interested members of the general public to call the office of the Zoning Administrator for further information concerning date, time, and place and subject matter of the public hearing; and

(b) The telephone number of the Zoning Administrator.

(3) Within ten (10) days after the commencement of the public hearing regarding the proposed variation, the City shall cause the removal of the sign or signs from the subject property and return same to the office of the Zoning Administrator.

(E) Any Interested Party may appear in person, by agent, or by attorney, and be heard at the hearing held pursuant to any such application for variation.

Sec. 150.1204 Authorized Variations.

(A) In accord with its jurisdiction as set forth in Article XI of this Chapter, the Zoning Board of Appeals, if at all, shall grant or shall recommend the granting of variations from the regulations of this Chapter only in accordance with the standards set forth in Section 150.1205, and then only in the following instances and in no others:

(1) To permit a yard smaller than the yard required by the applicable regulations.

(2) To permit the multiple-family use of a Legal Lot of Record located in a Multiple Family Residential District where such use otherwise would be prohibited solely because of insufficient area of the lot or insufficient average lot width provided, however, that no such variation shall be granted except upon the finding by the Zoning Board of Appeals that, in addition to all other required findings: **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(a) The proposed use of the lot will not overburden public utilities; **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(b) The strict application of the minimum lot area or minimum average width requirements of this Chapter to the lot will have a discriminatory effect upon the lot as compared to permissible lot sizes and permissible average lot widths in the vicinity of the lot; **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(c) The proposed use of the lot will comply with the parking requirements set forth in Article VIII of this Chapter; and **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(d) For a lot of a size that is less than 90 percent of the Minimum Lot Area for Multiple-Family Use, as set forth in Section 150.704(A) of this Chapter: **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(i) The proposed use of the lot will not require additional relief from any of the other bulk regulations set forth in Article VII of this Chapter; and **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(ii) The proposed density for the lot does not exceed the greater of (y) two dwelling units, and (z) the number of legally created dwelling units previously existing on the lot. **(Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)**

(3) In the RM1, RM1A, RM2, and RO districts, to reduce the off-street parking requirements by not more than two (2) parking spaces or twenty percent (20%), whichever is greater, in the case of a dwelling which existed on the effective date of this ordinance and which subsequently is lawfully converted into a multiple family dwelling. **(Ord. 57-02, J. 28, p. 410-473, passed 9/9/02)**

(4) For existing structures only, to grant relief from the applicable Floor Area Ratio provisions of this Chapter.

(5) To permit greater lot coverage than authorized by this Chapter.

(6) To permit the extension of a district where the boundary line of such district divides a lot in single ownership as shown of record, consistent with the provisions of Section 150.107 of this Chapter.

(7) To interpret the intent of the Official Zoning Map where the street layout actually on the ground varies from the street layout shown on the map, consistent with the provisions of Section 150.107 of this Chapter.

(8) To permit the reconstruction of a non-conforming building which has been destroyed or damaged by fire or other casualty, or act of God or the public enemy, to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed fifty percent (50%) of the cost of construction of the entire building new, where the Board shall find that a continuation of the non-conforming use will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire, or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area,

or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City. (Ord. 81-07, J. 33, p. 694-703, passed 11/13/07)

(9) To authorize the substitution of a non-conforming use in a non-conforming structure (all or substantially all of which structure is designed or intended for a use not permitted in the district in which it is located) where such new use is, or was, permitted in the same district or a more restricted district, as the non-conforming use which presently occupies the structure, but no such substitution shall extend or otherwise modify the provisions for the elimination of such non-conforming structure and no substitution or structural alteration shall be made unless such change or structural alteration and the use thereof conforms to all the regulations of the district in which the structure is located.

(10) To authorize the construction of a permanent porte-cochere, covered walkway, or canopy in the required front yard in the RM1, RM1A, RM2, RO, and B3 districts, provided such structure is rectilinear in shape, does not exceed twenty-five (25) feet in width at the building line and when, in the opinion of the Board, such structure will not adversely affect neighboring property. (Ord. 57-02, J. 28, p. 410-473, passed 9/9/02)

(11) To grant variations from the regulations herein contained for building setbacks and the requirements of steep slope regulations; provided, however, that with respect to special setbacks and other steep slope regulations, in addition to the general standards for variations set forth herein, the request meets the following conditions:

(a) The applicant shall demonstrate that geotechnical characteristics, hydrological controls, and plans for vegetation will comport with the regulations contained herein for required plans and development standards;

(b) The proposed development is a single family residence or involves enhancement of a lot upon which a single family residence exists. (amended by Ord. 94-99, adopted 11/8/99)

(12) To grant variations from the regulations herein contained for garage door openings.

(13) To recommend or grant other variations provided hearings therefor have been held as authorized by the City Council; except that (i) no variation shall be granted for the sole purpose of enabling the utilization of Bonus FAR for a building addition pursuant to Section 150.703.3 and (ii) no variation shall be granted to Article XX of this Chapter except pursuant to Section 150.2031. (Ord. 46-04, J. 30, p. 175-180, passed 6/28/04, Ord. 55-05, J. 31, p. 184-236, passed 9/12/05)

(14) To permit an encroachment into a yard or setback that is specifically required by a Subdivision Setback Line, but only if all requirements of Subsection 150.1202(D) have been satisfied. (Ord. 15-05, J. 31, p. 028-029, passed 2/28/05)

Sec. 150.1205 Standards.

(A) The Zoning Board of Appeals or the City Council, as the case may be, shall not vary the regulations of this Chapter unless it shall make findings of fact based upon evidence presented at the hearing in each specific case that:

(1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations of the zoning district in which it is located; however, the purpose of the variation is not based exclusively upon a desire to make more money from the property;

(2) The plight of the petitioner is due to unique circumstances and the proposed variation will not merely serve as a convenience to the petitioner, but will alleviate some demonstrable and unusual hardship which will result if the strict letter of the regulations of this Chapter were carried out and which particular hardship or practical difficulty is not generally applicable to other property within the same zoning district;

(3) The particular physical surroundings, shape, or topographical condition of the subject property would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out, or the application of this Chapter to the subject property has a discriminatory effect thereon;

(4) The alleged hardship has not been created by any person presently having a proprietary interest in the subject property;

(5) The proposed variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood;

(6) The proposed variation will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, or endanger the public safety or substantially diminish or impair property values in the neighborhood;

(7) The proposed variation will not alter the essential character of the neighborhood; and

(8) The proposed variation is in harmony with the spirit and intent of this Chapter.

(B) The Zoning Board of Appeals or the City Council, as the case may be, may impose such conditions and restrictions upon the subject property, the location, the construction, design, and use of the property benefited by such a variation as may be necessary or appropriate to comply with the foregoing standards and to protect adjacent property values.

Sec. 150.1206 Variation by Final Order of the Zoning Board of Appeals.

Unless granted by ordinance, the terms of the relief granted by variation shall be specifically set forth in a final order issued by the Zoning Board of Appeals which is supported by the findings of fact made by the Zoning Board of Appeals. The subject

property for which relief has been granted shall not be used in violation of the specific terms and the findings of fact of the final order unless such use is allowed by further findings of fact or additional orders, pursuant to additional hearings on requests therefore.

Sec. 150.1207 Variations by Ordinance.

(A) In those instances when the Zoning Board of Appeals is to make its recommendation to the City Council, the Zoning Board of Appeals shall, within 30 days after the final hearing, recommend the granting or denial of requests for variances, unless within such period of time the Zoning Board of Appeals shall make request to and receive permission from the City Council for an additional 15 days in which to make its recommendation. The failure of the Zoning Board of Appeals to provide a recommendation, within such 30 day period (or any extension thereof granted by the City Council), or such further time to which the applicant may, in writing, agree, shall be deemed a recommendation against the variance. (Ord. 18-04, J. 30, p. 49-54, passed 3/8/04).

(B) Whenever a variation is to be made by ordinance, upon receiving the report of the Zoning Board of Appeals, the City Council, without further public hearing, may grant or deny the requested variation or may return it to the Zoning Board of Appeals for further consideration.

(C) (Repealed by Ord. 18-04, J. 30, p. 49-54, passed 3/8/04)

Sec. 150.1208 Duration of Variation.

No final order of the Zoning Board of Appeals and no ordinance adopted by the City Council granting a variation shall be valid for a period of longer than twelve (12) months from the date of such order or ordinance, as the case may be, unless the action that precipitated the request for the variation (subdivision of land, construction, change in use, etc.) is pursued to completion without unnecessary delay on the part of the person holding title or beneficial interest in the property for which the variation was granted. In the event any structure or characteristic of use permitted by variation is moved, removed or discontinued, the final order or ordinance, as the case may be, granting the variation shall be null and void.

(A) Neither the Zoning Board of Appeals nor the City Council shall grant any extension of the aforesaid twelve (12) month period unless an application for such extension has been filed, public notice has been given, and a public hearing has been held, all in accord with the regulations contained in this Article.

(B) As a condition of granting a variation, the Zoning Board of Appeals or the City Council, as the case may be, may provide that the period of validity shall be less than twelve (12) months and may include date for completion of the project for which the variation is granted.