

### **§ 3.08 VARIANCES AND APPEALS.**

(A) *Purpose.* The Board of Adjustment shall consider a request for variance from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulties, and so that the spirit of the ordinance shall be observed and substantial justice done. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

(B) *Application.* An applicant shall submit an application for a variance on forms provided by the Planning Department to the Zoning Administrator. A survey of the subject property done by a licensed surveyor shall be required with the application. The application shall be accompanied by the full application fee as established in this ordinance.

(C) *Conditions on variances.* The Board of Adjustment may impose such conditions, including restrictions and safeguards, upon the property benefitted by the variance as considered necessary to prevent or minimize adverse effects upon other property in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the grant of variance. Violation of such conditions shall be a violation of this ordinance.

(D) *Relief less than requested.* A variance less than or different from the requested may be granted when the record supports the applicant's right to some relief, but not to the relief requested.

(E) *Criteria for granting variances.*

(1) Variances shall only be permitted when the applicant establishes that they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the Comprehensive Plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties complying with the official control. As used in connection with a decision as to whether to grant a variance, practical difficulties means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulty.

(2) In order to grant a variance, the Board of Adjustment must find that all of the following criteria are met:

(a) Is the variance request in harmony with the general purposes and intent of the official controls and consistent with the county's Comprehensive Plan?

(b) Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?

(c) Is the need for the variance due to circumstances unique to the property and not created by the current or prior property owners?

(d) Will the issuance of the variance maintain the essential character of the locality?

(e) Does the need for the variance involve more than economic considerations?

(F) *Variance procedure.*

(1) An application for a variance shall be filed with the Zoning Administrator, on the appropriate form, with the required fees. The application shall:

(a) Include a legal description of the property;

(b) Include a survey both in paper and electronic form (AutoCAD) completed by a Licensed surveyor in the state that is an accurate plot plan showing the locale, size, shape, height, and use of all existing buildings and all proposed buildings, and the width and depth of existing or proposed yards of the property involved;

(c) Include the signature of the lessee and the owner of the affected property;

(d) Include photographs of the property involved to illustrate the condition of the property; and

(e) State the grounds for the request of a variance.

(2) The Board of Adjustment shall hold at least one public hearing on each application for a variance prior to its final decision. Such public hearing may be continued and additional hearings may be held.

(3) The date of the public hearing shall be set by the Zoning Administrator upon receipt, in proper form, of the application and other requested material.

(4) Notice of the time, place and purpose of the public hearing shall be given by publication in a newspaper of general circulation in the town, municipality, or other area concerned, and in the official newspaper of the county, at least ten days before the hearing. Written notice shall also be given to the affected board of town supervisors and the municipal council of any municipality within two miles of the affected property.

(5) The written notice of the time, place and purpose of the public hearing shall be sent to the adjacent property owners at least ten days prior to the hearing. The written notice shall be sent to all property owners of record within 500 feet of the affected property.

(6) The current tax records on file in the office of the County Assessor shall be deemed sufficient for notification purposes. The failure of any property owner to receive notification, or defects in the notice, shall not invalidate the proceedings, if a bona fide attempt to comply with this subdivision has been made.

(7) Written notice shall be sent to the Commissioner of Natural Resources at least ten days prior to any hearing dealing with an application for a variance within a Shoreland Overlay District.

(8) The applicant for a variance, or a representative thereof, must appear before the Board of Adjustment in order to answer questions concerning the requested variance.

(a) The Board of Adjustment and county staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational performance conditions in relation to all pertinent sections of this ordinance.

(b) The applicant for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse affect on the environment may be required by the Board to demonstrate the nature and extent of the affect.

(9) The applicant must make a case for variance criteria listed above and the Board shall consider the criteria when recommending approval of the variance.

(10) The Board of Adjustment shall reach its decision not later than 30 days from the date of the public hearing.

(11) Approval of an application for a variance shall require a simple majority of Board of Adjustment members.

(12) The Board shall put its decision in writing and show the reasons for its decision to either grant or deny the variance, and the conditions imposed on the variance. The applicant for the variance shall be notified in writing of the Board of Adjustment's action by the Zoning Administrator.

(13) Right to appeal to district court: any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the state shall have the right to make an appeal to the District Court on questions of law and fact. Such appeal shall be made within 30 days after the receipt of the notice of the Board's decision.

(G) *Additional considerations in situations involving after-the-fact variances.* In circumstances where a variance is sought to an official control after the work has already been begun or completed in violation of one or more official controls, additional criteria may, in the discretion of the Board of Adjustment, be considered in determining whether to grant or deny the variance request. If the Board of Adjustment finds that all of the criteria set forth in subsection (E)(2)(a) through (e) are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny the request:

(1) Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable official controls?

(2) Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls?

(3) Did the applicant complete the work before being informed of the violation of applicable official controls?

(4) Are there similar structures in the area?

(5) Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

(6) Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure?

(H) *Administrative appeals; appeal procedure for decisions of the administrative office.*

(1) An appeal to the Board of Adjustment may be taken by any aggrieved person or by any officer, department, board or bureau of a town, municipality, county or state affected by any decision of the administrative office.

(2) A notice of appeal specifying the grounds thereof shall be filed with the Zoning Administrator, within 30 calendar days after the date of the officer's decision. The required filing fee, as determined by the County Board, shall be filed with the notice of appeal.

(3) The Zoning Administrator, after consulting with the Chairperson of the Board of Adjustment, shall fix a reasonable time for the hearing of the appeal by the Board of Adjustment and shall give written notice thereof to the appellant and the officer from whom the appeal is taken at least ten days prior to the hearing.

(4) Notice of the time, place and purpose of the hearing shall also be given by publication in a newspaper of general circulation in the town, municipality or other area concerned, and in the official newspaper of the county, at least ten days before the hearing.

(5) The officer from whom the appeal is taken shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken.

(6) Any interested party may appear in person or by agent or by attorney at the hearing.

(7) An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property.

(8) The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit.

(9) The reasons for the Board's decision shall be stated in writing and shall be sent to the appellant and the officer from whom the appeal is taken.

(I) *Fees.* The application fee for the consideration of an appeal or a variance shall be as established by the County Board by resolution. Any outside costs for consulting services to aid the Board of Adjustment in making its decision on the variance application shall be paid by the applicant. Such fee shall be as determined by the County Board.

(J) *Lapse of variance by non-use.*

(1) A variance shall become void one year after its issuance by the Board of Adjustment unless it has been used or a petition for an extension of the one-year time limit has been granted.

(2) A violation of any condition set forth in granting a variance shall be a violation of this ordinance and automatically terminates the variance.

(K) *Recording.*

(1) A certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirement, decision or determination by an administrative official, or a request for a variance shall be filed by the Zoning Administrator with the County Recorder. The order issued by the Board of Adjustment shall include the legal description of the property involved, the owner's name, and any conditions imposed by the Board of Adjustment.

(2) A copy of any variance granted for a property located within a Shoreland Overlay District shall be sent to the Commissioner of Natural Resources within ten days of the final decision.

(Ord. 97, passed 7-21-2009; Ord. 107, passed 11-6-2012; Ord. 123, passed 9-20-2016)