

ARTICLE 5. APPEALS, VARIANCES, INTERPRETATIONS

Section 5-1: Appeals

- (A) An appeal from any final order or decision of the administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff.
- (B) An appeal must be taken within 30 days after the date of the decision or order appealed from.
- (C) Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.
- (D) An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.
- (E) The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

Section 5-2: Variances

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator in the planning department. Applications shall be handled in the same manner as applications for permits in conformity with the provisions of Sections 12-3 and 12-4.
- (B) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the Ordinance will be observed, public safety and

welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

- (1) If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property;
 - (2) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
 - (3) The hardship relates to the applicant's land, rather than personal circumstances;
 - (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
 - (5) The hardship is not the result of the applicant's own actions; and
 - (6) The variance will neither result in the extension of a nonconforming situation in violation of Article 8 nor authorize the initiation of a nonconforming use of land.
- (C) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
- (D) Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the Board.
- (E) No change in permitted uses may be authorized by variance.
- (F) A variance may be issued for an indefinite duration or for a specified duration only.
- (G) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

Section 5-3: Interpretations

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in

the context of an appeal from a decision of the Administrator, they shall be handled as provided in Section 5-1.

- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with administrator in the planning department. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
 - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerline;
 - (2) Boundaries indicated as approximately following lot lines, city limits, or extraterritorial boundary lines, shall be construed as following such lines, limits, or boundaries;
 - (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines;
 - (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
 - (5) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in Section 21-13(K).

Section 5-4: Requests to be Heard Expeditiously

As provided in Section 12-14, the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article 6, and obtain the necessary information to make sound decisions.

Section 5-5: Burden of Proof in Appeals and Variances

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 5-1, the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 5-2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

Section 5-6: Board Action on Appeals and Variances

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (see Section 3-17), then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).
- (B) Before granting a variance, the board must take a separate vote and vote affirmatively (by a four-fifths majority-see Section 3-17) on each of the six required findings stated in Section 5-2(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 5-2(B) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (C) A motion to deny a variance may be made on the basis that any one or more of the six criteria set forth in Section 5-2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).