

## **SECTION 1000. VARIANCES**

### **1001. Board of Adjustments and Appeals**

#### **.01 Establishment**

There is hereby established a Board of Adjustments and Appeals, vested with such administrative authority as is hereinafter provided and as provided by state law. The Commission shall be designated as the Board until such time as other membership is so designated by the Council. Each member shall serve until a successor is appointed.

#### **.02 Powers**

The powers of the Board of Adjustments and Appeals shall be:

- (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative office in the enforcement of this Ordinance
- (2) To hear requests for variances from the literal provisions of this Ordinance in instances where their strict enforcement would cause practical difficulties (*Ord No 12-10-2015-2*) because of circumstances unique to the individual property under consideration, and to recommend to the Council to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance and only after notice and public hearing
- (3) To interpret the meaning of this Ordinance and to determine the location of district boundaries in cases of ambiguity and to make rulings with respect to the application of this Ordinance

#### **.03 Operating Rules**

- (1) The Board is empowered to prepare and adopt its own rules and operating procedures subject to the limitations contained herein
- (2) A majority of the members shall constitute a quorum and a quorum shall be present to hear and decide all matters. All meetings shall be open to the public
- (3) The Board shall elect a chair and vice-chair from its members. The Secretary to the Commission shall serve as Secretary to the Board. The Board shall keep minutes of its proceedings showing the vote of each member on each question

.04 Procedures

- (1) Application for any variance or relief from an alleged error shall be made to the Secretary of the Board of Adjustments and Appeals. The application shall be in writing. The application shall state the nature of the appeal, the basis for the appeal and contain a drawing to scale illustrating the nature of the variance sought as appropriate. Upon receipt of any application, a time and place for a public hearing shall be set before the Board, and such notice given as the Board shall deem proper.
- (2) The Board of Adjustments and Appeals may impose such restrictions and conditions upon the premises benefited by a variance as it considers necessary so that the public health, safety and general welfare may be secured.
- (3) If an application is approved, the Board shall report the matter to the Council for confirmation and approval or denial. No permit shall be granted or application allowed until the Council has approved same. All Council decisions remain subject to judicial review through normal judicial processes.
- (4) If an application is denied, the action of the Board shall be final and no further action shall be taken upon it unless appealed to the Council within 10 days. The Council may hear the appeal and decide to uphold the decision of the Board or to grant the application. If the application is granted, reasons for such decision shall be documented. All Council decisions remain subject to judicial review through normal judicial processes.

**1010. Notice**

A notice of the time and place of the Public Hearing shall be published in the official newspaper of the City, at least 10 days prior to the date of the hearing. A similar notice shall be mailed at least 10 days before the date of the hearing, to each owner of affected property, and property situated, wholly or partly, within 100 feet of the property to which the variance relates. A copy of the notice and a list of the owners and addresses to which notice was sent, shall be attested by the responsible person and shall be made a part of the proceedings. Failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bonafide attempt to comply with this provision has been made. If the variance is requested in the Floodplain District, the City shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten days' notice of the hearing. A copy of all decisions granting variances in the Floodplain District shall be forwarded by mail to the Commissioner of Natural Resources within 10 days of such action. (*Ord No 12-15-2011-1*)

Notice shall be given to the applicant for a variance that: *(Ord No 1991-1-H)*

- .01 The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage.
- .02 Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

**1011. Standards for Granting Variances** *(Ord No 3-20-2008-1; Ord No 12-10-2015-2)*

- .01 The Board may recommend approval of a variance application only upon finding that all of the following criteria, as applicable, have been met:
  - (1) The variance, and its resulting construction or project, would be in harmony with the general purposes and intent of this Ordinance, and would be consistent with the comprehensive plan
  - (2) The variance applicant has satisfactorily established that there are practical difficulties in complying with this Ordinance. "Practical difficulties" means that:
    - (2.1) The Applicant proposes to use the property in a reasonable manner not permitted by this Ordinance
    - (2.2) The plight of the landowner is due to circumstances unique to the property that were not created by the landowner; and
    - (2.3) The variance, if granted, would not alter the essential character of the locality
  - (3) The variance request is not based exclusively upon economic considerations
  - (4) The variance, and its resulting construction or project, would not be detrimental to the public welfare, nor would it be injurious to other land or improvements in the neighborhood
  - (5) The variance, and its resulting construction or project, would not impair an adequate supply of light and air to adjacent properties, nor would it substantially increase traffic congestion in public streets, increase the danger of fire, endanger the public safety, or substantially diminish property values within the neighborhood
  - (6) The variance requested is the minimum action required to address or alleviate the practical difficulties
- .02 No variance shall have the effect of allowing in any district uses prohibited in that district.

- .03 No variance shall have the effect of permitting a (*Ord No 12-10-2015-2*) lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied: (*Ord No 12-15-2011-1*)
- (1) Variances shall not be issued by the Council within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - (2) Variances shall only be issued by the Council upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in practical difficulties (*Ord No 12-10-2015-2*) to the Applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- .04 In approving and recommending a variance, the Board shall clearly identify in writing:
- (1) The specific conditions which justify a determination that undue hardship exists
  - (2) How granting a variance is consistent with the spirit and intent of this Ordinance
- .05 In denying a variance, the Board shall clearly identify in writing:
- (1) The specific conditions which justify a determination that no practical difficulty (*Ord No 12-10-2015-2*) exists
  - (2) The specific conditions for which the Applicant failed to provide adequate evidence demonstrating that practical difficulty (*Ord No 12-10-2015-2*) exists
  - (3) How granting a variance is inconsistent with the spirit and intent of this Ordinance

### **1012. Rehearing**

No applicant or representative shall be entitled to present any appeal for interpretation or variance from this Ordinance within six months of the time the original application was denied by the Board of Adjustments and Appeals when such appeal is substantially the same as the original appeal. This provision shall not apply to an appeal withdrawn before Board of Adjustment and Appeals action.

### **1013. Administrative Variance (*Repealed – 1990-1-A*)**