

17.04.310 – Variations

A. Purpose

The Variation process provides a method to grant relief from conformance with the strict letter of the provisions of this Title, where conformance would cause a particular hardship or practical difficulty to a specific property and where the relief granted is consistent with the purposes and intent of this Title.

B. Hearing and Decision

The Board of Zoning Appeals shall hold a public hearing in accordance with Section 17.04.150 (Public Hearing), at which evidence in support of the Variation must be presented by, or on behalf of, the applicant, and any evidence presented by interested parties shall be heard. Notification of the public hearing shall be provided in accordance with Section 17.04.160. The public hearing shall be held not more than 90 days after filing of an application, and a decision shall be made not more than 30 days after the conclusion of testimony at the public hearing or the Board's next regular meeting after the conclusion of testimony, whichever is later.

C. Approval Criteria

The Board of Zoning Appeals may approve a Variation only when it makes written findings with respect to each requested Variation, based upon the evidence presented at the public hearing, that strict compliance with the regulations and standards of this Title would create practical difficulties or particular hardships for the subject property, and the requested Variation is consistent with the stated purposes and intent of this Title.

In making its determination of whether practical difficulties or particular hardships exist, the Board of Zoning Appeals must take into consideration the extent to which evidence has been submitted substantiating the following:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or particular hardship to the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
2. The conditions upon which the petition for a Variation is based would not be applicable, generally, to other property within the same zoning classification;
3. The purpose of the Variation is not based exclusively upon a desire to make more money out of the property;
4. The alleged practical difficulty or particular hardship has not been created by any person presently having an interest in the property;
5. The Variation, if granted, will not alter the essential character of the neighborhood.
6. The granting of the Variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and
7. The proposed Variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

D. Authorized Variations

The Board of Zoning Appeals may grant Variations from the regulations of this Title only in the following instances and in no others:

1. To permit a yard, setback or landscape buffer of a lesser dimension than required by the applicable regulations.
2. To allow a fence in excess of the height limitations required by the applicable regulations.
3. To permit the use of a lot for a use prohibited solely because of insufficient area or width, but the area or width of the lot shall in no event be varied to an extent that reduces the requirement to less than ninety percent (90%) of the required lot area or width.
4. To increase the permitted maximum building or lot coverage, but the maximum building or lot coverage shall in no event be varied to an extent that increases the maximum by more than twenty percent (20%).

E. Conditions

The Board of Zoning Appeals may require such conditions and restrictions concerning use, construction, character, location, landscaping, screening and other matters in granting a Variation, upon a finding that such conditions and restrictions are necessary to prevent or minimize adverse effects upon other property and improvements, that would reasonably be expected to occur if the Variation were granted without such conditions and restrictions. All such conditions and restrictions shall be expressly set forth in the written record of the Board's approval of the Variation. Failure to comply with such conditions and restrictions as may have been imposed shall constitute grounds for revocation of the Variation.

F. Limitations

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1. A Variation shall automatically lapse twelve (12) months after the date it is granted, unless the construction (pursuant to a building permit) authorized by the Variation commences within that twelve (12) month period. However, the Board of Zoning Appeals may extend this period, upon written request from the applicant showing good cause.
2. A Variation is granted to a specific property and authorizes the conduct of the Variation only on the property identified in the application and is not transferable to other properties.
3. The approval of a Variation authorizes the relief from strict conformance with specific provisions of this Title, but does not authorize the establishment or extension of any use, development, construction, reconstruction, alteration or moving of any building or structure prior to obtaining all other required approvals, including building permits and occupancy permits.

G. Variation Less than Requested

When consistent with the notice of Public Hearing, the Board of Zoning Appeals may grant a Variation less than, or different from, that requested when the record supports the applicant's right to some relief, but not to the entire relief requested.

(1985-Z-11 : § 1 (part); 1981-Z-6 : § 1 (part))