

Sec. 3-22. Application for variance.

(1) *In general.* The following steps are to be followed to request a variance for property from the particular regulations of this Code.

(2) *Application.* An application shall be filed with the zoning official on a form provided by him with the following items or information (no application shall be accepted which does not contain each item):

(a) *Owner.* If the applicant is other than the owner of the entire parcel in question, written consent for such application signed by all the owners of the property.

(b) *Description.* A complete legal description of the premises for which a variance is requested.

(c) *Survey.* A survey or plot diagram indicating applicable setback lines and the location of the proposed construction.

(d) *Nature of variance.* A statement as to the exact nature of the proposed variance and the physical nature of the premises which makes the variance necessary.

(e) *Hardship.* A statement as to the hardship imposed by these regulations in the event no variance is granted.

(f) *Zoning.* The zoning classification of the premises.

(g) *Impact.* A statement as to the impact of granting the variance on contiguous property owners.

(h) *Fee.* A filing fee set by the county commission to cover advertising and other administrative costs.

(i) *Adjacent owners.* The names and addresses of all contiguous property owners within five hundred (500) feet of the boundary of the property if its use is residential or one thousand (1000) feet if its use is commercial.

(j) *Signature.* A statement signed by the applicant under penalty of perjury that the materials submitted are true and correct to the best of the applicant's knowledge and belief.

(3) *Minor variances.* The zoning official may grant minor variances up to twenty (20) percent of the limits contained in applicable district regulations if the variance otherwise meets the requirements of this section.

(4) *Referral to planning commission.* The zoning official shall refer to the planning commission all denied requests for minor variances and all other requests for variances and shall state in writing his reasons for such denial or his recommendation with respect to other requests. The building and zoning official shall ensure the application is promptly placed on the agenda for a meeting of the planning commission and that due notice of the public hearing is published under section 3-2 of this Code.

(5) *Findings required.* Before making a finding on an application for a variance, the planning commission shall first determine that the proposed variation in the application of this Code will not:

(a) Constitute any change in the districts established in the official zoning atlas.

(b) Impair an adequate supply of light and air to adjacent property.

(c) Materially increase the congestion in public streets.

(d) Increase the danger of fire or pose other threats to the public safety.

(e) Materially diminish or impair established property values within the surrounding area.

(f) In any other respect impair the public health, safety, morals or general welfare.

(6) *Specific findings.* The planning commission shall not grant a variance unless it finds that:

(a) Special conditions and circumstances exist relating to the physical aspects of the property in question which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

(b) The special conditions and circumstances do not result from the actions of the applicant.

(c) Granting the variance will not confer on the applicant any special privilege that is denied by this Code to other lands, buildings or structures in the same zoning district.

(d) Literal interpretation of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Code and would work unnecessary hardship on the applicant.

(e) The variance granted in the minimum variance that will make the reasonable use of the land, building or structure possible.

(f) Granting the variance will be in harmony with the general purpose and intent of this Code and will not be injurious to the area involved or otherwise detrimental to the public welfare.

(7) *Conditions.* In granting any variance, the planning commission may prescribe appropriate conditions and safeguards in conformity with this Code and any ordinance enacted under its authority. Violation of such conditions and safeguards, which shall be made a part of the terms under which the variance is granted, shall be a violation of this Code.

(8) *Limits on variances.* Under no circumstances shall the planning commission grant a variance allowing a deviation of more than thirty-five (35) percent from the applicable district regulations in question, nor shall a variance be granted as to density or to permit a use not generally or conditionally permitted in the zoning district regulations. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures or building in other zoning districts shall be considered grounds for the authorization of a variance.

(9) *Denial.* If an application for variance is disapproved, the planning commission shall take no further action on another application for substantially the same proposal on the same premises for twelve (12) months after such denial.

(Ord. No. 85-4, 7-23-85; Ord. No. 86-3, § 9, 4-3-86; Ord. No. 88-1, 1-18-88; Ord. No. 88-43, 10-5-88; Ord. No. 88-49, 11-21-88)

Cross references: Subdivision variance, § 7-27.