

H. Stay or Proceedings

An appeal shall stay all proceedings regarding the action on appeal, unless the entity or officer from which the appeal is taken certifies to the Zoning Board of Appeals that a stay would cause imminent peril to life or property. The entity or officer described above shall state the factual basis for the opinion provided in a certificate provided to the Board of Appeals. Otherwise, proceedings shall only be stayed by a restraining order granted by the Zoning Board of Appeals or Circuit Court.

M. Notice of decision

A certified copy of the Board of Appeals' decision shall be transmitted to the applicant and to the Zoning Coordinator.

I. Extended Appeal of an Administrative Decision

1. An appeal of an administrative decision may be filed after 20 calendar days if the party filing the appeal did not receive actual notice of the administrative decision.
2. The decision to hear an appeal described in (a), above, must be approved by not less than six members of the Zoning Board of Appeals (ZBA).
3. The ZBA does not have the authority to hear an appeal of an administrative decision filed more than 30 calendar days after the appealing party has received actual or constructive notice.
4. An appeal taken to the ZBA under this section shall be consistent with the procedures established in this section.

Section 50-196 Variance Procedure

A. Applicability

The Zoning Board of Appeals shall have the power to authorize, upon application (or appeal in specific cases) filed as provided in this article, such variances from the terms, provisions or requirements of this chapter and as otherwise provided in the Code of Ordinances as will not be contrary to the public interest; provided, that such variances shall be granted only in such cases where, owing to special and unusual conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of this chapter would result in practical difficulty or unnecessary hardship. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of this chapter and in the public interest. In authorizing a variance, with attached conditions, the Board shall require such evidence and guarantee or bond as it shall deem to be necessary to enforce compliance with the conditions attached.

1. Use Variance

A use variance allows a use in a zoning district that is otherwise not allowed in that district under the terms of the Zoning Ordinance. An applicant must show "undue hardship" to be granted a use variance.

2. Nonuse/Dimensional Variance

A nonuse variance is a variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Ordinance. An applicant must show "practical difficulty" to be granted a nonuse variance.

B. Initiation

An application, in cases in which the Board of Appeals has original jurisdiction under the provisions of this chapter, may be taken by any property owner, or option holder, or by a tenant, with the consent of the property owner, or by a governmental officer, department, board or bureau. Such applications shall be filed with the Zoning Coordinator.

Variance Procedure

50.17.12



C. Application requirements

All applications for variation shall be submitted in accordance with the minimum submission requirements of Section 50-187. At a minimum, such application shall specify the grounds for the variation.

D. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of Section 50-189.

E. Action by Zoning Coordinator

The Zoning Coordinator shall investigate the application and submit a report to the Board of Appeals.

F. Action by Board of Appeals

1. The Board shall decide all applications and appeals within 30 days after the final hearing thereon. A copy of the Board's decision shall be transmitted to the applicant or appellant, and to the Zoning Coordinator. The decision shall be binding upon the Zoning Coordinator and observed by him, and he shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the Board.
2. The decision of the Board shall not become final until the expiration of five days from the date of entry thereof, unless the Board shall find the immediate taking effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.

G. Review Standards

No variance shall be authorized by the Board unless the board finds that all of the following facts and conditions are met:

1. Use Variances:
 - i. Undue Hardship. That the condition, location, or situation of the specific property or intended use of the property that creates an undue hardship is unique to that property and the zoning district.
 - ii. Not Self-Created. That the need for the variance was not created by the applicant or the applicant's predecessors in title.

- iii. No Substantial Detriment. That the use variance shall not alter the essential character of the neighborhood, nor be a detriment to adjacent properties.
- iv. Cannot Be Reasonably Used. That the land, building or structure cannot be reasonably used for the permitted uses in the zoning district.
- v. Consistency with Master Plan/Zoning Ordinance. That the variance shall be consistent with, and not materially impair, the purpose and intent of the Master Plan and Zoning Ordinance including the zoning district.

2. Nonuse/Dimensional Variances:

- i. Exceptional or Extraordinary Circumstances or Conditions. There are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district or in the general vicinity. Exceptional or extraordinary circumstances or conditions may include:
 - a. Exceptional narrowness, shallowness or shape of a specific property in existence on the effective date of this Chapter or amendment; or
 - b. Exceptional topographic or environmental conditions or other extraordinary situations on the land, building or structure; or
 - c. The use or development of the property immediately adjacent to the subject property would prohibit the literal enforcement of the requirements of this Chapter or would involve significant practical difficulties.
- ii. Substantial Property Right. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the neighboring area.
- iii. Not Self-Created. That the immediate practical difficulty causing the need for the variance was not created by the applicant or the applicant's predecessors in title.
- iv. No Substantial Detriment. The Variance shall not cause substantial detriment to adjacent property and the surrounding neighborhood.
- v. Consistency with Master Plan/Zoning Ordinance. That the variance shall be consistent with, and not materially impair, the purpose and intent of the Master Plan and Zoning Ordinance including the zoning district.

H. Conditions of approval

- 1. In authorizing a variation the Board of Appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
- 2. All conditions attached to a variance are enforceable in the same manner as any requirements of this ordinance.

I. Notice of decision

A certified copy of the Board of Appeals' decision shall be transmitted to the applicant and to the Zoning Coordinator.

J. Expiration of Variance

1. Variance approval is valid for one year from the date of approval. If the applicant has not established the use in the case of a use variance or pulled a building permit to construct the structure authorized by a non-use variance, variance approval shall expire. If a building permit is issued within a year of the variance approval, but the building is not completed before expiration of the building permit and the permit is not extended, the variance approval shall expire.
2. A use variance that ceases to be used for 12 consecutive months shall expire. Where applicable, the 12-month period shall begin to run from the date the use variance is approved.

Section 50-197 Exceptions Procedure

A. Applicability

The Board of Appeals may authorize upon application such exceptions from the terms of this ordinance as will not be contrary to the public interest, when the strict application of the dimensional regulations of this ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, and where a property owner can show that:

1. To permit the reconstruction of a nonconforming building which has been destroyed, or partially destroyed, by fire or Act of God where the board shall find some compelling public necessity requiring a continuance of the nonconforming use.

2. To permit the erection and use of a building or the use of premises in any location for a public service corporation for public utility purposes which the board deems reasonably necessary for the public convenience or welfare. Such uses lawfully existing on the effective date of this ordinance, shall be deemed to have received such a permit, shall be provided with such a permit by the Zoning Coordinator upon request, and shall not be nonconforming uses; provided, however, that a permit shall be required for the enlargement, extension or relocation of any of these existing uses.

N. Initiation

An owner of land within the city, or such owner's duly authorized agent or representative, may submit an application for an exception to the Zoning Coordinator and Board of Appeals.

O. Application requirements

An application for exception shall be made by filing a written request specifying the grounds for the exception. Such application shall be considered filed when a complete application is delivered to the Zoning Coordinator, who shall enter the date and time of filing on the notice.

Exceptions Procedure

50.17.13

