

CHAPTER 16 - LAND USE ORDINANCE

Article V - Appeals, Variances, Interpretations

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Section 16-91 Appeals from Final Orders or Decisions by the Administrator.

(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 therefore. A notice of appeal shall be considered filed with the Administrator and the Board of Adjustment when delivered to the inspections department, and the date and time of filing shall be entered on the notice by the Administrator.

(B) An appeal must be taken within thirty 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 or 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 16-92 Variances.

(A) A variance is a means whereby the Town may grant relief from the effect of the Land Use Ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the Ordinance. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator.

(B) A variance from the requirements of this ordinance may be granted by the Board of Adjustment if it determines the following:

(1) Strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance;

(2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit; and

(3) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done.

(C) In making the foregoing determinations, the Board of Adjustment shall be guided by the following principles:

- (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;
- (6) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance; and
- (7) The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

(D) 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.

(E) A variance may be issued for an indefinite duration or for a specified duration only.

(F) 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 chapter.

Section 16-93 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 16-91.

(B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the inspections 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 center lines;

(2) Boundaries indicated as approximately following lot lines, Town 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 regulation 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 16-254.03.

Section 16-94 Requests to be Heard Expeditiously.

As provided in Section 16-66, 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 VI, and obtain the necessary information to make sound decisions.

Section 16-95 Burden of Proof

The burden of proof shall lie upon the applicant or appellant, as the case may be, for any and all proceedings before the Board of Adjustment.

Sections 16-96 through 16-100 Reserved.

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