

ARTICLE 5. APPEALS, VARIANCES, INTERPRETATIONS

Section 5-1. Appeals

- (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 Town Clerk, and the date and time of filing shall be entered on the notice by the planning staff.
- (B) An appeal must be taken within 45 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, 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 5-2. Variances

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. Applications shall be handled in the same manner as applications for permits in conformity with the provisions of Article 3.
- (B) A variance may be granted by the Board of Adjustment if it concludes that, by granting the variance, the following findings are supported by the Board of Adjustment decision:
 - (1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance;
 - (2) that the variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit; and
 - (3) that in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. It may reach these conclusions if it finds that:
 - (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; and
 - (6) The variance will neither result in the extension of a nonconforming situation in violation of Article 8 nor authorize the initiation of a nonconforming use of land.
- (C) 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.
 - (D) A variance may be issued for an indefinite duration or for a specified duration only.
 - (E) 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 Ordinance.

Section 5-3. 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 5-1.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with administrator in the planning 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 map boundary rules shall apply:
 - (1) Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
 - (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
 - (3) Boundaries indicated as approximately following governmental incorporation or extraterritorial jurisdiction boundaries shall be construed as following such jurisdictional boundaries.
 - (4) Boundaries indicated as approximately following the center of railroad lines shall be construed to be midway between the main track or tracks.
 - (5) Boundaries indicated as approximately following the centerlines of streams, rivers, lakes, or other bodies of water shall be construed as following such centerlines.

- (6) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and if the shoreline is changed either naturally or as permitted by law, such a boundary shall be construed as moving with the actual shoreline.
- (7) Boundaries indicated as following the contours of certain elevations or soils of a particular type shall be construed as following the actual height or soil contour as determined by accepted survey practices.
- (8) Boundaries indicated as parallel to or extensions of natural or manmade features indicated in subsections 1 through 7 above shall be so construed.
- (9) Distances not specifically indicated shall be determined by the scale of the official zoning map.

Where uncertainties continue to exist after application of the above rules, appeal may be taken to the Board of Adjustment as provided in Section 5-1 of this Ordinance.

- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in Section 19-5.

Section 5-4. Requests to be Heard Expeditiously

As provided in Article 6, 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 6, and obtain the necessary information to make sound decisions.

Section 5-5. Burden of Proof in Appeals and Variances

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 5-1, the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 5-2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

Section 5-6. Board Action on Appeals and Variances

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (see Section 3-17), then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).

- (B) Before granting a variance, the board must take a separate vote and vote affirmatively (by a four-fifths majority-see Section 3-17) on each of the six required findings stated in Section 5-2(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 5-2(B) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (C) A motion to deny a variance may be made on the basis that any one or more of the six criteria set forth in Section 5-2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).
- (D) All individuals submitting evidence or testimony concerning an appeal or a variance shall be sworn in by the Chairman prior to submitting evidence or testimony.