

CHAPTER 16 - LAND USE ORDINANCE

Article V - Appeals, Variances, Interpretations

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 therefor. 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 16-91.01 Appeals from Decisions by the Architectural Review Commission.

(A) An appeal from a decision by the Architectural Review Commission may be taken to the Board of Commissioners by the person aggrieved. An appeal is taken by filing with the Town Clerk a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Town Clerk when delivered to the Office of the Clerk, and the date and time of filing shall be entered on the notice.

In addition, the Board of Commissioners may initiate its own review of any decision made by the Architectural Review Commission to assure that said decision is consistent with the land use policies and procedures established by the Council. The review may be initiated by the Board of Commissioners upon affirmative vote in open meeting.

(B) An appeal must be taken by the aggrieved person or a review must be initiated by the Board of Commissioners within fifteen days after the date of the decision from which the appeal or review is made. In the event that an appeal is not taken by an aggrieved person or a review is not initiated by the Board of Commissioners within the fifteen-day period, then the decision by the ARC shall be deemed a final decision. Provided, however, that the Board of Commissioners need not initiate a review of an ARC decision that is part of a pending conditional use permit application. At such time that the conditional use permit is brought before the Board of Commissioners, the Board may reverse, affirm, or modify the ARC decision.

(C) Whenever an appeal is filed or a review is initiated, the Administrator shall forthwith transmit to the Board of Commissioners all of the papers and records related to the matter from which the appeal or review is taken. Notice of the appeal or review shall be sent to adjoining property owners as required in Section 16-45.02(D).

(D) An appeal or review stays the decision by the Architectural Review Commission until the Board of Commissioners takes action on such appeal or review.

(E) The Board of Commissioners may reverse, affirm (wholly or partly), or modify the decision from which the appeal or review is taken. To this end, the Board of Commissioners shall have all of the powers of the Architectural Review Commission related to the matter from which the appeal or review is taken.

[Adopted September 12, 1999]

Section 16-92 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 in the inspections department. Applications shall be handled in the same manner as applications for special use permits in conformity with the provisions of Sections 16-48, 16-49, and 16-56.

(B) A variance may be granted by the board of adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice 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 VIII 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 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 zoning 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 in Appeals and Variances.

(A) When an appeal is taken to the board of adjustment in accordance with Section 16-91, 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 Subsection 16-92(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

Section 16-96 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 votes necessary for adoption (see Section 16-32), 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 two or more members.

(B) Before granting a variance, the board must take a separate vote and vote affirmatively (by a 4/5th majority - see Section 16-32) on each of the six required findings stated in subsection 16-92(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 16-92(B) shall include a statement of the specific reasons for 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 subsection 16-92(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 two or more members.

Sections 16-97 through 16-100 Reserved.