

14-706 ZONING ADJUSTMENTS AND VARIANCES

14-706-01 Administrative adjustments

14-706-01-A. Authority to File. Applications for administrative adjustments may be filed only by the subject landowner or the subject landowner's authorized agent.

14-706-01-B. Purpose. This section sets out the required review and approval procedures for administrative adjustments, which are minor deviations from otherwise applicable standards that may be approved by the Community Development Director.

14-706-01-C. Applicability. The Community Development Director is authorized to approve the following types of administrative adjustments:

1. Modifications of ten percent or less of any zoning district setback, lot size, lot width, building coverage or height standard;
2. Alternate parking plans involving a modification of ten percent or less of any of the off-street parking and loading standards of Section 14-501;
3. In specific circumstances where adjustments to the landscape requirements may be appropriate, an alternate landscape plan may be approved by the Community Development Director. Such approval shall be in consideration with Section 14-503. Such adjustments shall be clearly identified on the landscape plan along with a written description of the approved adjustment;
4. Modifications of ten percent or less of any sign height or setback

14-706-01-D. Application Filing. Applications for administrative adjustments must be submitted to the Community Development Director on the appropriate application form with accompanying fees.

14-706-01-E. Review and Decision. The Community Development Director must review each application for an administrative adjustment and act to approve, approve with conditions or deny the application based on the approval criteria of Section 14-706-01-F.

14-706-01-F. Approval Criteria. Administrative adjustments may be approved by the Community Development Director only upon a finding that all of the following criteria have been met:

1. The requested adjustment is consistent with the stated purposes of this development ordinance;
2. The requested adjustment eliminates an unnecessary inconvenience to the applicant and will have no appreciable adverse impact on the health, safety or general welfare of surrounding property owners or the general public;
3. Any adverse impacts resulting from the administrative adjustment will be mitigated to the maximum practical extent; and
4. The owner of any real property that would be affected by the administrative adjustment has provided written consent to the applicant.

14-706-01-G. Findings of Fact. The decision of the Community Development Director must be accompanied by written findings of fact specifying the reasons for the decision.

14-706-01-H. Conditions of Approval. In granting an administrative adjustment, the Community Development Director may impose conditions upon the subject property that are necessary to reduce or minimize any

potentially adverse impacts on other property in the neighborhood and to carry out the stated purposes of the Comprehensive Plan and this development ordinance.

14-706-01-I. Notice of Decision. Within five days of the Community Development Director's decision on an administrative adjustment, the Community Development Director must mail notice of the decision to the applicant and all other parties who have made a written request for notification.

14-706-01-J. Appeals. Appeals of the Community Development Director's decision on an administrative adjustment must be taken to the Board of Adjustment **with the exception of appeals on Article 5 Subsection 14-506 which must be taken to Planning Commission by filing a notice of appeal with the Community Development Director. Appeals to the Planning Commission must be filed within 15 calendar days of the Community Development Director's action. The Planning Commission shall have the right to affirm or overrule the decision of the Community Development Director. Further, an applicant may appeal a decision of the Planning Commission to the City Council if such notice of appeal is made to the Community Development Director within 15 calendar days of the Planning Commission's decision. The City Council shall have the right, by resolution, to affirm or overrule the decision of the Planning Commission.**

(Ord. No. 17942)

14-706-02 Zoning variances

14-706-02-A. Authority to File. Applications for zoning variances may be filed only by the subject landowner or the subject landowner's authorized agent.

14-706-02-B. Authority and Applicability. The zoning variance procedures of this section authorize the Board of Adjustment to approve, in specific cases, variances from specific zoning standards of this development ordinance that will not be contrary to public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in unnecessary hardship.

14-706-02-C. Prohibited Zoning Variances. The zoning variance procedures of this article may not be used to:

1. Permit a principal use in a zoning district that is not otherwise allowed in that district;
2. Waive, modify or otherwise vary any of the subdivision design or improvement standards of Article 6, Subdivision Design and Improvements;
3. Waive, modify or amend any definition or use classification;
4. Waive, modify or otherwise vary any of the review and approval procedures; or
5. Waive, vary, modify or otherwise override a condition of approval or requirement imposed by another decision-making body.

14-706-02-D. Application Filing. Zoning variance applications must be filed with the Community Development Director as provided in Section 14-700-03. The application must be signed by all owners of the property and must include:

1. The correct legal description of the property;
2. The current zoning of the property;
3. The name, address and phone number of at least one property owner or designated representative who will be the contact person;
4. A clear description of the request;
5. A narrative explanation of how, in the applicant's opinion, the findings required for granting a variance as described in Section 14-706-02-H are met; and

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6. A site plan, drawn to scale, showing existing and proposed buildings parking areas and other improvements with their dimensions and distances from lot lines indicated.

14-706-02-E. Public Hearing Notice. Newspaper and mailed notice of the Board of Adjustment's public hearing must be provided in accordance with Section 14-700-09.

14-706-02-F. Staff Review and Report. The Community Development Director must review each proposed variance application in accordance with the review and decision-making criteria of Section 14-706-02-H and, if deemed necessary, distribute the variance application to other agencies and reviewers. Based on the results of those reviews, the Community Development Director must provide a report on the variance application to the Board of Adjustment.

14-706-02-G. Board of Adjustment's Hearing and Decision. The Board of Adjustment must hold a public hearing on the proposed variance and review the application in accordance with the applicable review criteria of Section 14-706-02-H. Following the public hearing, the Board of Adjustment must approve, approve with conditions, or deny the application. A concurring vote of at least four members of the Board of Adjustment is required to approve any variance request.

14-706-02-H. Review Criteria—Findings.

1. A non-use variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions have been met:
 - (a) The requested variance arises from conditions which are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;
 - (b) The requested variance will not adversely affect the rights of adjacent property owners or residents;
 - (c) Requiring strict compliance with the subject zoning regulation will constitute a practical difficulty for the subject property owner; and
 - (d) The requested variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
 - (e) The alleged hardship has not been created by any person presently having an interest in the property; and
 - (f) The variance, if granted, will not alter the essential character of the neighborhood.
2. The Board of Adjustment must make a determination on each condition, and its findings must be entered in the official record.

14-706-02-I. Conditions of Approval. In granting a variance, the Board of Adjustment may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood and to carry out the general purpose and intent of this development ordinance.

14-706-02-J. Expiration of Approval. In the event the property owner fails to file an application for building permit within six months after final approval of the variance has been granted, then such variance will expire in accordance with the following provisions:

1. For good cause shown, the expiration date may be extended by the Board of Adjustment for a period not to exceed six months. The application for extension or modification may be made by letter to the Community Development Director and will be considered only if received before the expiration date of the variance. The Community Development Director must place such request, with any recommendation of the Community Development Director on the agenda of the Board of Adjustment.

The Community Development Director must notify the applicant by first class mail of the date of the proposed consideration by the Board. On that date, the Board must hear from the applicant and the Community Development Director and may hear from other interested parties. Only one such extension may be granted.

2. No action by the City will be necessary to cause the variance to expire. Its expiration will be considered a condition of the original approval. After the expiration date, or extended expiration date, any further application for a building permit or for other development activity on the site will be considered as though the variance had not been granted.
3. Approval of a variance does not, in itself, vest any rights. Rights vest only after the related building permit is issued and substantial construction is begun in reliance on that permit.
4. A variance will also expire upon expiration of a building permit.

14-706-02-K. Appeals of Board of Adjustment Decisions. Any person aggrieved by a decision of the Board of Adjustment may present to the Circuit Court of the County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within 30 days after the date of the Board of Adjustment's decision on the matter.

(Ord. No. 17446; Ord. No. 17534)