11-2-306 Variances

(1) Definition – A variance is a devise that grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from an inconvenience or a desire to reduce financial difficulties.

(2) Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the zoning ordinance.

(3) The Board of adjustment may grant a variance only if:

(a) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

(b) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

(c) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;

(d) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(e) The spirit of the zoning ordinance is observed and substantial justice done.

(4) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (3)(a), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship:

(a) Is located on or associated with the property for which the variance is sought; and

(b) Comes from circumstances peculiar from the property, not from conditions that are general to the neighborhood.

(5) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (3)(a), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

(6) In determining whether or not there are special circumstances attached to the property under subsection (3)(b), the Board of Adjustment may find that special circumstances exist only if the special circumstances:

(a) Relate to the hardship complained of; and

(b) Deprive the property of privileges granted to other properties granted in the same district.

(7) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(8) Variances run with the land.

(9) The Board of Adjustment and any other body may not grant use variances.

(10) In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:

(a) Mitigate any harmful effects of the variance; or

(b) Serve the purpose of the standard or requirement that is waived or modified.

(11) If a variance is granted by the Board of Adjustment, alterations must begin six months from the date the variance is granted, otherwise, the variance shall be null and void. The Board of Adjustment may grant one six (6) month extension if the petitioner can show adequate cause that circumstances necessitate a time extension.

11-2-307 District Court Review of Board of Adjustment Decisions

(1) Any person or entity adversely affected by any decision of the Board of Adjustment may petition the District Court for a review of the decision.

(2) In the petition for review, the petitioner may only allege that the Board of Adjustment's decision was arbitrary and capricious or illegal.

(3) The petition is barred unless it is filed within 30 days after the Board of Adjustment's decision is final.

(4) The Board of Adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and if available, a true and correct transcript of this proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

(5) Review of the board of Adjustment's decision shall be done by the court in the manner and upon the standards provided by the law.

(6) The filing of a petition for review by the District Court does not stay the decision of the Board of Adjustment. Before filing the petition for review, the aggrieved party may petition the Board of Adjustment to stay its decision. Upon receipt of a petition for a stay, the Board of Adjustment may order its decision stayed pending District Court review if the Board of Adjustment finds it to be in the best interest of the City. After the petition is filed, the petitioner may seek an injunction staying the Board of Adjustment's decision.