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SECTION 1200 –

LAND USE APPLICATION REVIEW CRITERIA AND GENERAL REQUIREMENTS

1203. VARIANCE CRITERIA AND REQUIREMENTS [Last amended 12/05/02; Ord. 720]

1203.01 Purpose and Scope.

The purpose of a variance is to provide administrative relief when a strict application of the zoning requirements of lot width, lot depth, building height, setback, access, or other dimensional requirements, excluding lot area, would impose practical difficulties. These difficulties may result from geographic, topographic or other physical conditions on the site or in the immediate vicinity.

1203.02 Review Criteria.

A variance may be authorized, subject to the Type B application procedure set forth in Section 1301 and pursuant to subsection 1203.01, and upon adequate demonstration by the applicant that the proposed variance satisfies the following criteria:

- A. That special conditions and circumstances exist which are peculiar to the land, building or structure involved;
- B. That granting the proposed variance would be in the public interest and would be in harmony with the purpose and scope set forth in subsection 1203.01, the intent and purpose of the underlying zoning district and the intent and purpose of this ordinance;
- C. That the variance would result in minimal detriment to the immediately vicinity;
- D. That the variance requested is the minimum variance which would make possible the reasonable use of the applicant's land, building or structure; and
- E. That the special conditions and circumstances on which the application is based do not result from the negligent or knowing violation of this ordinance by the applicant.

1203.03 Conditions of Approval.

In approving an application for a variance, the decision-making body may impose such conditions as it deems appropriate to ensure that the intent of this section is carried out. Such conditions shall be reasonably related to the variance criteria set forth in subsection 1203.02.

1203.04 General Requirements.

Any variance authorized pursuant to this ordinance shall be subject to the following additional requirements:

- A. An authorized variance is not personal to the applicant and shall be deemed to run with the land;
- B. A variance shall be null and void one (1) year from the date it is granted unless completion or substantial construction has taken place. The Director may extend the variance for an additional period not to exceed one (1) year upon the receipt of a written request from the applicant demonstrating good cause for the delay and provided that the request for extension is received by the Director prior to expiration of the original variance approval.
- C. No variance shall be granted which allows the establishment or expansion of a use otherwise prohibited or subject to conditional use procedures.
- D. No variance shall be granted which shall have the effect of rezoning the property.
- E. No variance shall be granted which allows the creation of a parcel which is substandard to the minimum parcel size requirements of the particular zoning district.

1203.05 Compliance with Conditions.

Compliance with conditions imposed in approval of a variance and adherence to an approved plot plan shall be required. Any departure from these conditions of approval and approved plans constitutes a violation of this ordinance. The Director may revoke approval of any variance for failure to comply with any condition imposed in approval of the variance or for any other violation of this ordinance.

1203.06 Revocation of Variance.

The procedure for the revocation of approval of a variance shall be as follows:

A. If, upon review by the Director, a violation of any condition imposed in approval of a variance is found, the Director shall inform the applicant by registered letter and first class mail of the violation and shall require compliance within sixty (60) days, or the Director will take action under subsection (B) of this section to revoke approval of the variance. The Director's letter, constituting Notice of Intent to Revoke Variance may be appealed to the Board within thirty (30) days of its mailing. The Board shall consider the appeal in accordance with Section 1403 and may affirm, reverse, or modify the Director's Notice of Intent to Revoke Variance. The applicant must comply with the Board's Order on Appeal of Notice of Intent to Revoke Variance within thirty (30) days of the issuance of the Board's decision. If the applicant does not comply with the Board's Order within thirty (30) days, the Director shall take action under Subsection (B) of this section to revoke approval of the variance. The Director may extend the time for compliance if the applicant provides financial or other assurances suitable to the Director that the conditions of approval of the variance will be satisfied and maintained.

B. If the violation is not corrected within the time required by subsection (A), the Director shall notify the applicant by registered and first class mail that the variance has been revoked, and that any subsequent action on the application will require a new application for a variance.

1203.07 Administrative Adjustments.

As a result of unique characteristics of specific lands, uses or structures, and in the event that setbacks, building heights, lot area or other dimensional ordinance standards are determined to be unreasonable or inappropriate by the Director, limited administrative adjustment of such standards may be authorized at the time application for building permit or land division is made providing the adjustment does not exceed 15% of the required standard, and the applicant can demonstrate satisfaction of one of the following criteria:

A. That the adjustment is needed to permit a structural addition or new construction no closer to a property line than the existing structure(s).

B. That the adjustment would provide for setbacks no less restrictive than those for structures on affected adjacent property(s).

C. That the combined setbacks of structures on the parcel in question and adjacent affected parcels meet the combined respective setback requirements.

D. That other special conditions or circumstances exist which are peculiar to the land or use structure involved, and which justify an adjustment, while still satisfying the intent of the standard.

1203.08 Exception to Variance [Section added 12/05/02; Ord. 720]

A variance is not required to construct an addition to an existing structure that does not meet the setbacks listed in the underlying zoning district, provided that the addition will be located no closer to the property line or to any off-site dwelling than the existing structure.

- A variance to the setbacks listed in the underlying zoning district is not required to construct a building that will be no closer than 5 feet from a side or rear property line, provided that the adjacent property owners sign an affidavit stating that they approve of the location of the structure.