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## PROCEDURE FOR VARIANCE APPLICATION

The Zoning Board of Appeals (ZBA) may authorize, upon appeal in specific cases, such variances from the terms of the Zoning Code not contrary to the public interest where, owing to special conditions, a strict application of the provisions of the Zoning Code would result in undue hardship or practical difficulty. Variances shall not be granted on the grounds of convenience or profit, rather, the Board must make specific findings of fact that support conclusions as listed in Section 1151.06 of the Zoning Code.

### **PUBLIC HEARING**

The Board generally meets the third Monday of each month for a public hearing on an Application for Variance. City staff gives written notice by regular mail to property owners within two hundred (200) feet of the property in question as listed on the most recent Shelby County Tax Duplicate.

In addition, public notice of such hearing as to the time, place, and date and subject of the hearing, is published in a newspaper of general circulation within the City prior to the date of the hearing. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.

### **JURISDICTION; TYPES OF VARIANCES**

Section 1151.03 of the Zoning Code grants the Board the jurisdiction to approve or deny an Application for Variance. The concurring vote of three (3) members of the Board shall be necessary to reverse or modify any decision of the Planning Coordinator under the terms of the Zoning Code. The following describes the types of variances the Board can and cannot approve:

- (1) Variances on lots. The Board shall authorize, upon appeal, in specific cases, such variance from the terms of this Zoning Code as will not be contrary to the public interest, where, owing to special conditions of the land (such as, an irregular shaped lot; a lot of exceptional topography; or an exceptionally narrow, shallow or irregular lot, existing and of record at the time of the passage of this Zoning Code), a literal enforcement of the provisions of this Zoning Code will result in unnecessary hardship or practical difficulty.
- (2) Variances on existing or proposed buildings, structures, facilities and signs. The Board may grant the projection of an existing or proposed building, structure, facility or sign into a required yard or at a height greater than permitted, to secure an addition practical in its construction and arrangement. Such projection shall not exceed fifty percent (50%) of the required depth or width of the required yard, nor shall it exceed twenty five percent (25%) of maximum height or size regulations for the applicable use.
- (3) Use variances not authorized. The provisions for variances within this Zoning Code shall not be construed to permit variances which shall in effect amend the use provisions in this Zoning code. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Zoning Code in the zoning district involved, or any use expressly or by implication prohibited by the terms of this Zoning code in such district.

## **PROCEDURES AND REQUIREMENTS FOR GRANTING OF VARIANCES.**

- (1) Authorization. As permitted by Section 1151.04(b) of the Zoning Code, the Board may authorize, upon appeal in specific cases, such variance from the terms of this Zoning Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Code would result in undue hardship or practical difficulty. Variances from the regulations of this Zoning Code shall not be granted unless the Board makes specific findings of fact based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed have been met by the applicant. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Zoning Code will result in undue hardship or practical difficulty.
- (2) Appeal for Variance. Variances shall only be considered in cases where an application for a zoning permit has been previously filed with the City Manager or his designee and rejected. The applicant, or his agent, shall file an appeal for variance on forms provided by the City. The completed application form shall also be accompanied by one copy of a plot plan showing:
  - The boundaries and dimensions of the lot.
  - The size and location of existing and proposed improvements, including, but not limited to, buildings, structures, facilities, signs, lighting, access-ways, walks, off-street parking spaces, loading berths and landscaping.
  - The proposed use of all parts of the lot and improvements. The relationship of the variance requested to the standards set by this Zoning Code.
- (3) Public Hearing on Variance. The Board shall select a time and place for the public hearing on a variance application and shall publish one notice of the time, place and date of such hearing in a newspaper of general circulation of the City at least seven days prior to the hearing, and give written notice thereof to all owners of property located within 200 feet in any direction of the property affected by the variance application.
- (4) Standards for Variance. The Board shall not grant a variance unless it can, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
  - There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity and district.
  - Such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and district but which is denied to the property in question.
  - The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and district in which the property is located.
  - The granting of such variance will not alter the land use characteristics of the vicinity and district, diminish the marketable value of adjacent land and improvements or increase the congestion in the public streets.

- (5) Modifications. In granting a variance, the Board may impose such modifications, safeguards and restrictions upon the premises benefited by the variance as may be necessary to comply with the standards set forth in subsection (d) hereof to reduce or minimize potential injurious affects of such variance upon neighboring properties, and to carry out the general purpose and intent of this Zoning Code. Such modifications, safeguards and restrictions may be in the form of approval of a lesser variance for the projection, height or size of an existing or new building, structure, facility or sign than requested by the applicant, however, may not result in a use variance as prohibited by Section 1151.03(b)(3) of the Zoning Code.
- (6) Decision on Variance. The Board shall have all powers of the City Manager or his designee with respect to such decision. The concurring vote of at least three members of the Board in attendance at the public hearing shall be necessary to concur with, reverse or modify any decision of the City Manager or his designee. The Board shall render a written decision containing relevant findings of fact without unreasonable delay after the close of the hearing, and in all cases, within forty-five days after the close of the hearing.
- In cases where the board concurs with the written recommendations and findings of the City Manager or his designee, such written recommendations and findings shall constitute the written decision of the Board.
  - In cases where the Board's decision differs from the written recommendation and findings of the City Manager or his designee, the Board majority shall collectively, draft, approve, and formally submit written recommendations and findings based on their decision to the secretary of the board. Such written recommendations and findings shall be read verbatim by the president of the board at the same meeting in which they are formally submitted.

## **YOU WILL NEED**

- a completed Application for Variance and three (3) copies of required site plans, if applicable
- any additional information not submitted with the original zoning application, which the Planning Director feels the Board should review

## **FEES**

Each Application for Variance shall be accompanied by a fee of one hundred and twenty-five dollars (\$125.00).

## **PROCEDURE**

1. Obtain, complete, and submit an Application for Variance and related site plans at least 14 days prior to the scheduled public hearing.
2. Applicant(s) should attend the public hearing and be prepared to answer questions relevant to the application.
3. The ZBA will determine if it has the authority to grant the request.
4. The Board may render a decision the same date as the public hearing, or may continue the matter for further review.
5. The ZBA must make a finding that the reasons set forth in the application are valid and justify the granting of the variance. Any granted variance must remain in harmony with the general purpose of the Zoning Code, so that the public health, safety, convenience, comfort, prosperity or general welfare will be conserved and substantial justice done.
6. The Board shall render a written decision on the application without unreasonable delay on all cases, within 45 days after the close of the public hearing.
7. Approval of a variance does not preclude the need for applicable zoning and building permits.

## **QUESTIONS?**

If you have any questions or need assistance in the application process, please contact:

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