

cases such variance from the terms of the land development code and building chapters, except as otherwise provided for therein, as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development code or building chapters would result in unnecessary hardship.

b. Authorization.

1. *Defined.* A variance is hereby defined as a relaxation of certain terms of the land development code or building chapters where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or any predecessor-in-interest of the property, a literal enforcement of those terms of the land development code or building chapters would result in unnecessary and undue hardship.

2. *Authorized variances.* For the purpose of this chapter, a variance is authorized only for height of structures; size of yard setbacks; driveway widths, street line corner clearances, and property line edge clearances, as provided in section 30-336(15); and landscape and tree management and flood control provisions as provided in section 30-310.

3. *Restrictions on granting of variances.* A variance shall not be granted:

- i. for establishment or expansion of a use otherwise prohibited; or
- ii. because of the presence of nonconformities in the zoning district or adjoining districts; or
- iii. because of financial loss or business competition; or
- iv. because the property was purchased with the intent to develop or improve the property, and the intended development or improvement would violate the restrictions of the land development code or building chapter, whether or not it was known at the time of purchase that such development would be a violation.

c. A variance from the terms of this chapter or building chapters shall not be granted unless and until:

1. A written application for a variance is submitted demonstrating:

- i. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
- ii. That literal enforcement of the provisions of the land development code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the land development code or building chapters.
- iii. That the special conditions and circumstances do not result from the action of the applicant.

- iv. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.
 2. Notice of public hearing shall be given as required by subsections 30-354(j) and (l) and as may be required by this chapter or building chapters.
 3. The public hearing shall be held whereat any party may appear in person or by agent or attorney.
 4. The board of adjustment shall make findings that the requirements of subsection (d)(3)c. of this section have been met by the applicant.
 5. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
 6. The board of adjustment shall further make a finding that the grant of the variance will be in harmony with the general intent and purpose of the land development code or building chapters, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- d. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with the land development code or building chapters. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable according to applicable law.
- e. Under no circumstances shall the board of adjustment grant a variance under this chapter to permit a use not permitted generally or by special exception in the district involved, or any use expressly or by necessary implication prohibited by the terms of this chapter in the district.
- f. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
- g. Any variance granted shall expire within six months after the date of grant, unless a building permit based upon and incorporating the variance is issued within the aforesaid six-month period and construction has begun thereunder.
- h. The board of adjustment shall not entertain any petition for a variance within two years after the denial of a request for the same variance for the same property.
- (4) *Decisions.* In exercising any of the powers now or otherwise given to the board of adjustment, the board of adjustment may, so long as such action is in conformity with this section and the requirements of the land development code and building chapters, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such

order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

(5) *Additional duties.* The board of adjustment shall perform such additional duties as may, by ordinance, be delegated to it and which shall pertain to the above assigned powers.

(6) *Special exceptions and variances deemed appeals.* It is hereby declared for the purpose of the procedures outlined in subsection 30-354(h) that the term "appeals" as used in subsection 30-354(h) shall be deemed to include special exceptions and variances.

(e) *Meetings.* The board of adjustment shall hold regular meetings at least once in each calendar month. Special meetings may be held upon the call of the chairman or upon the written request of any two members of the board. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and all other official actions, which shall be filed immediately in the office of the board and which shall become public records.

(f) *Publication of agenda of hearings.* A list of the hearings to be held at meetings of the board of adjustment shall be published in a newspaper of general circulation in the city at least ten days prior to each meeting.

(g) *Testimony before board.* The chairperson of the board or, in his/her absence, the vice-chairperson, may administer oaths.

(h) *Appeals from administrative decisions.*

(1) Unless otherwise provided for in this Code of Ordinances, appeals must be taken to the board of adjustment by an affected person within 20 days from the date of the entry of a decision by an administrative officer regarding any land development code or building chapter provision (Chapters 6 and 30), which affects a specific property where the affected person has a legal interest, when that decision is adverse to his/her interest or by the applicant within 20 days from the time the building inspector refuses to issue any permit after application therefore has been duly made.

(2) All appeals containing or attaching the requisite information shall be filed with the secretary of the board on forms prescribed by the board and accompanied by all of the papers constituting the record upon which the action was taken.

(3) An appeal to the board of adjustment shall stay all collateral proceedings related to the action appealed from, including but not limited to collateral proceedings pending pursuant to Chapter 2, Article V, Division 8, notice of violation, or Division 6, civil citations, unless the officer from whom the appeal is taken shall certify to the board after the appeal has been filed that, by reason of facts stated in the certificate, a stay, in his/her opinion, would cause imminent peril to life or property, in which case proceedings on the collateral action shall not be stayed other than by order of the board or by a court of equity after notice to the officer from whom the appeal is taken and on due cause shown.

(4) The board shall hear and determine all appeals promptly after giving to all parties at least ten days' written notice of the time and place of the hearing. Any party in interest at a hearing may appear in person or be represented by an agent or attorney.

(5) The board shall, make such order as it shall deem to be proper to each

case and to that end shall have all of the powers of the officer from whom the appeal was taken. Each order shall contain a full recital of the board in each case and a copy thereof shall be filed in the records of the board by its secretary.

(i) *Notification of hearing on variance.* No variance shall be authorized by the board of adjustment upon appeal from the terms of this chapter unless a public hearing on the appeal has been held by the board after notice of the hearing has been given as follows: Where the variance is for some deviation from the zoning district regulations, all owners of property within 300 feet of the premises for which the variance is requested shall be notified of the hearing.

(j) *Notification of appeal alleging error by administrative official.* In connection with appeals where it is alleged there is error in any order, requirement, decision or determination made by any administrative official in the enforcement of this chapter, notification shall be given to all owners of property within 300 feet of the premises which are involved in the appeal.

(k) *Notification of request for special zoning exception.* In all cases of requests for special exceptions to the terms of this chapter which the board of adjustment is required to hear and decide, all owners of property within 300 feet of the premises for which the special exception is requested shall be notified of the hearing.

(l) *Notification time for mailing.* Where notice to nearby property owners is required in connection with hearings, the notice shall be mailed to the property owner at least ten days before the date of the hearing. For this purpose the owner of property shall be deemed to be the person who, with his/her address, is so shown on the tax rolls of the city.

(m) *Rehearings.*

(1) *Request for rehearing.* A request for rehearing of any matter decided by the board of adjustment may only be submitted by the original petitioner or agent, the city manager or designee, the city commission, or an affected person, who presented oral or written testimony or evidence at the initial hearing. The request must be filed with the secretary of the board on a form provided by the secretary within ten days of the date the decision is made by the board. The request will be considered at the next scheduled meeting of the board at least 15 days after the request is filed.

(2) *Basis of request for rehearing.* A request for rehearing shall only be granted if at least three members of the board find that the requester has demonstrated by competent evidence that the board overlooked or failed to correctly interpret evidence presented at the initial hearing.

(3) *Procedure for scheduling rehearing.* If the request for rehearing is granted by the board, the board shall hold the rehearing at its next regularly scheduled meeting, or at a special meeting convened by the board for that purpose at least 15 days after the request is granted. Notice of the rehearing shall be sent to all owners of property within 300 feet of the premises involved in the rehearing.

(n) *Appeals to a court.* Any affected person aggrieved by any decision of the board may appeal the decision to a court of competent jurisdiction within 30 days of the date of the decision.

(o) *Implementation of board's decision.* Any permit, authorization or other development order issued based on the board's decision prior to the end of the period for filing an appeal pursuant to subsection (n) is considered conditional. Any action taken during the appeal period is taken at the sole risk of the property owner, who may be required to undo any work done if the decision of the board is overturned either by a rehearing of the board or by a court of competent jurisdiction.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 951088, § 1, 7-8-96; Ord. No. 970453, §§ 2--5, 6-8-98; Ord. No. 021037, § 1, 7-14-03)

Cross references: Buildings and building regulations, Ch. 6.

Sec. 30-355. Historic preservation board.

- (a) *Creation.* There is hereby created and established a historic preservation board.
- (b) *Duties and authority.* It shall be the responsibility of the board to:
 - (1) Update the official inventory of cultural resources and submit to the city commission recommendations and documentation concerning such updating.
 - (2) Develop programs to stimulate public interest in urban neighborhood conservation, to participate in the adaptation of existing codes, ordinances, procedures and programs to reflect urban neighborhood conservation policies and goals.
 - (3) Explore funding and grant sources and advise property owners concerning which might be available for the identification, protection, enhancement, perpetuation and use of historic, architectural, archaeological and cultural resources.
 - (4) Cooperate with agencies of city, county, regional, state and federal governments in planning proposed and future projects to reflect the concerns and policies expressed in this article, and assist in the development of proposed and future land use plans.
 - (5) Advise property owners and local governmental agencies concerning the proper protection, maintenance, enhancement and preservation of cultural resources.
 - (6) Advise the city commission concerning the effects of local governmental actions on cultural resources.
 - (7) Conduct regular public meetings and call special meetings.
 - (8) Otherwise further the objectives and purposes defined in subsection 30-112(b).
 - (9) Submit to the city commission for its approval, rules and procedures to be used by the board for implementation of the powers and duties consistent with the provisions of this chapter.
 - (10) Report to the city commission concerning the board's activities at least once a year.
 - (11) Review and recommend sites, buildings, structures, objects, areas and districts, both public and private, for listing on the local register for historic places.
 - (12) Approve or deny petitions for certificates of appropriateness required under subsection 30-112(c)(5).
 - (13) Notify the city manager who will take appropriate action when it appears that there has not been compliance with the requirements of subsection 30-112(c)(5).
- (c) *Composition; terms; vacancies.*
 - (1) The board shall consist of nine (9) citizen members who shall be appointed