

18.09.040 Variances.

The planning commission acting as the board of adjustment shall have the authority to grant a variance where practical difficulties, unnecessary hardships and results inconsistent with the general purposes of this title might result from the strict application of certain provisions. A variance may not be granted to allow a use that is not in conformity with the uses specified by this title for the district in which the land is located.

A. Eligibility. No variance application may be filed until one calendar year after the completion, and approval by the town, of all work associated with any other development or improvement, or from the issue of any other town permit for the subject property. For example, no variance application may be filed until one year after issue of a final certificate of occupancy upon completion of building construction. Similarly, no variance application may be filed until one year after issue of a business license for use of an existing building. The only exception to this restriction to eligibility shall be for variances sought for building setbacks (yard depths) due to bona fide construction stake-out errors.

B. Application. The owner or his agent may make application for a variance, which shall be on a form prescribed by the planning director and filed by the planning director. The application shall be submitted at least 30 days prior to the next regularly scheduled public hearing date, and shall be heard by the board of adjustment within 45 days of the date of the application; provided, however, that this period may be extended in any case for which an environmental impact statement is required.

C. Public Hearing. The board of adjustment shall hold a public hearing on any proposed variance, and shall give notice thereof in at least one publication in the local newspaper at least 10 days prior to the public hearing.

1. Notice shall be given to all property owners within a radius of at least 300 feet. Such notice is to be sent 10 days prior to the public hearing. The failure of any property owner to receive the notice of hearing will not invalidate the proceedings.

2. Public notices shall be posted in one conspicuous place on or adjacent to the property which is the subject of the applications at least 10 days prior to the date of the public hearing. Public notice shall be accomplished through use of a two-foot by two-foot plywood face generic notice board, to be issued by the town planning director, and as follows: the applicant shall apply to the town for issuance of the notice board, and shall deposit with the town planning director the amount of money as specified in the current rate and/or fee resolution. The applicant shall be responsible for placement of the notice board in one conspicuous place on or adjacent to the property which is the subject of the application at least 14 days prior to the date of the public hearing. Planning department staff shall post laminated notice sheets and vinyl information packets on the board no later than 10 days prior to the hearing. Upon

return of the notice board in good condition to the planning director by the applicant, an amount of dollars of the initial notice board deposit shall be refunded to the applicant as specified in the current rate and/or fee resolution.

D. Conditions for Granting. Before any variance may be granted, it shall be shown and the board of adjustment shall find that:

1. The variance shall not constitute a grant of special privileges inconsistent with a limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;

2. Such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

3. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

E. Board of Adjustment Action. The decision of the board of adjustment shall be final and conclusive, unless within 10 days from the date of action the original applicant or an adverse party makes an appeal to the town council. This appeal should be in writing to the town council and filed with the town clerk.

1. The decision of the town council shall be final and conclusive unless within 10 days from the date of action the original applicant or an adverse party files application to the county superior court for a writ of certiorari, writ of prohibition or writ of mandamus.

F. Period of Validity. Any variance authorized by the board of adjustment shall remain effective only for one year, unless the use is begun within that time or construction has commenced. If not in use or construction has not commenced within one year, the variance shall become invalid.

G. The fee for the variance and an appeal shall be set by resolution. (Ord. 2001-13 § 1, 2001; Ord. 94-06 § 2, 1994).