

## **Section 16.6 Variances**

**A. Authority:** The ZBA shall have the power to authorize specific variances from specific site development standards of this Ordinance, such as lot area and width requirements, building height and setback requirements, lot width and depth standards, lot depth to width ratio requirements, off-street parking and loading space standards, and sign standards. The ZBA shall not have the power to authorize variances from requirements of this Ordinance pertaining to permitted uses of land in a District.

**B. Standards:** The ZBA shall have the power to authorize variances from specific site development requirements provided that all of the standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.

1. That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances specific to the property such as its narrowness, shallowness, shape, or topography, that do not generally apply to other property or uses in the same District, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular lot.
2. That the practical difficulty or special circumstance is not a result of the actions of the applicant.
3. That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
4. That the variance will relate only to property described in the variance application.
5. That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.
6. That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.
7. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

### **C. Procedures**

1. Application Requirements: Application for a variance shall specify, at a minimum, the name, address, and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the Ordinance's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan, elevation drawing or similar drawing prepared by a registered land surveyor or registered engineer that clearly illustrates property lines, property line bearings and dimensions, existing buildings and structures, and the proposed improvements to the lot for which the variance is requested. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings, including any information the applicant may choose to submit to demonstrate conformance with the standards of subsection (B) above. A minimum of seven (7) copies of the completed application shall be submitted along with any application fees.
2. Hearing: Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the

application prior to such hearing. Notice of the hearing shall comply with Section 2.11. Upon the hearing, any party may appear in person or by agent or attorney.

3. Decision: The ZBA shall render a decision in the form of a motion or resolution containing a full record of the findings and determinations of the ZBA, and the basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance. The burden of proof for obtaining a variance rests with the applicant.
  - a. In granting a variance, the ZBA may prescribe appropriate conditions and safeguards in conformity with this Ordinance. In the case where the ZBA prescribes such conditions, the ZBA may require that a performance guarantee be furnished to ensure compliance with such conditions. Violations 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 Ordinance. See Section 2.6 regarding performance guarantees and Section 20.2 regarding conditional approvals.
  - b. A variance shall become null and void unless the construction or use authorized by such variance has been substantially commenced within one-hundred eighty (180) days after the granting of the variance and that an occupancy permit is issued by the Building Inspector within two (2) years of the granting of the variance. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that undermine the basis for the original issuance of the variance.
  - c. No application for a variance which has been acted upon shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original denial, in the discretion of the ZBA.