

7-18-107. VARIANCES.

(1) Definitions. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.

(2) Variance Criteria. Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits.

- (a) The Board may grant a variance only if:
  - (i) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and
  - (ii) There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and
  - (iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and
  - (iv) The granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - (v) The spirit of the zoning ordinance is observed and substantial justice done.
- (b) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find an unreasonable hardship unless the alleged hardship:
  - (i) Is located on or associated with the property for which the variance is sought; and
  - (ii) Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- (c) In determining whether or not enforcement of the zoning ordinances would cause unreasonable hardship under this section, the Board may not find unreasonable hardship if the hardship is self-imposed or economic.
- (d) In determining whether or not there are special circumstances attached to the property under this section, the Board may find that special circumstances exist only if the special circumstances:
  - (i) Relate to the hardship complained of; and
  - (ii) Deprive the property of privileges granted to other properties in the same district.

- (e) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (f) Variances, once granted, shall run with the land.
- (g) Use variances may not be granted by the Board and any other body.
- (h) In granting a variance, the Board may impose additional requirements on the applicant that will:
  - (i) Mitigate any harmful affects of the variance; or
  - (ii) Serve the same or similar purpose of the standard or requirement that is waived or modified.