

Sec. 46-36. - Zoning board of appeals; membership; meetings, powers, procedures, standards, and fees.

(d) Variance review standards.

- (1) Authority of zoning board of appeals to grant variances. The zoning board of appeals, after public hearing, shall have the power to grant requests for variances from the provisions of this chapter where it is proved by the applicant that there are practical difficulties in the way of carrying out the strict letter of this chapter relating to the construction, equipment, or alteration of buildings or structures so that the spirit of this chapter shall be observed, public safety secured and substantial justice done.
- (2) Non-use variance. A non-use variance may be allowed by the zoning board of appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met:
 - a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions include:
 1. Exceptional narrowness, shallowness or shape of a specific property on November 1, 1997;
 2. By reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure; or
 3. By reason of the use or development of the property immediately adjoining the property in question; whereby the literal enforcement of the requirements of this chapter would involve practical difficulties;
 - b. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.
 - c. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
 - d. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
 - e. The variance will not impair the intent and purpose of this chapter.
 - f. That the immediate practical difficulty causing the need for the variance request was not created by any affirmative action of the applicant.
- (3) Use variances. A use variance may be allowed by the zoning board of appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing that all of the following conditions are met:
 - a. That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the zone district in which it is located;
 - b. That the condition or situation of the specific piece of property or the intended use of such property for which the variance is sought is unique to that property and not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Such unique conditions or situations may include:
 1. Exceptional narrowness, shallowness or shape of a specific property on November 1, 1997;
 2. Exceptional topographic conditions or other extraordinary situation on the land, building or structure;

3. The use or development of the property immediately adjoining the property in question;
 - c. That the proposed use will not alter the essential character of the neighborhood or the intent of the master plan.
- (4) Planning commission consideration and report. Prior to zoning board of appeals decision on a request for a use variance, the board of appeals may request that the planning commission, upon presentation of the application by the applicant, consider such request and forward a report to the zoning board of appeals. If requested by the board of appeals, such report shall be limited to the planning commission's review of the effect of the proposal on the existing or intended character of the neighborhood and the ability of the property owner to use the property for a use already permitted under the existing zoning classification.
- (5) Period of validity. No variance granted by the zoning board of appeals shall be valid for a period longer than 12 months from the date of its issuance. However, the applicant may, request, at no cost, up to one six-month extension of said variance from the zoning board of appeals. The zoning board of appeals may grant such extension provided that the original circumstances authorizing the variance have not changed and that the circumstances creating the need for the extension were beyond the control of the applicant.

(Prior Code, §§ 15.2101—15.2107; Ord. No. 150, §§ 21.01—21.07, 11-1-1997; Ord. No. 150-D, 11-19-2002; Ord. No. 150-R, §§ 1—6, 9-20-2011)