

CHAPTER 13: VARIANCES

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CHAPTER 13: VARIANCES

13.01 General Requirements

All applications for variances shall be submitted in writing to the person responsible for administration of the referenced section.

13.02 Zoning Regulations

Certain variances of the zoning regulations may be applied for as follows:

- (A) *General regulations.* A variance shall not be granted unless and until an application demonstrates:
- (1) *Special conditions.* 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 building in the same district.
 - (2) *Deprivation of rights.* That literal interpretation of the provisions of the zoning regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning regulations.
 - (3) *Resulting actions.* That the special conditions and circumstances do not result from the actions of the applicant.
 - (4) *No special privileges.* That granting the variance requested will not confer on the applicant any special privilege that is denied by Zoning, Chapters 1 through 5, to other lands, structures, or building in the same district.
 - (5) *Nonconforming uses.* No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (B) *Consideration by the Planning Commission.* Applications for variances of the following shall be considered by the Planning Commission.
- (1) *Access to structure.* The Planning Commission shall have the authority to waive the requirement that every building hereafter erected or moved shall be located on a lot which has frontage on a public street when the property owner provides safe and convenient access for fire protection and sanitation vehicles.
 - (2) *Building height variance in all zoning districts.*
 - (a) The Planning Commission shall have the authority to grant a variance to allow a proposed structure to exceed building height limits in all Zoning Districts in those instances where, owing to special conditions and circumstances, literal enforcement of the building height restrictions would result in unnecessary hardship or the applicant can show that the additional height requested will not adversely affect adjoining or neighboring property owners.
 - (b) The Planning Commission may prescribe appropriate conditions and safeguards to ensure any variance will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- (C) *Consideration by the Board of Adjustment.*
- (1) *Bulk and area.* Applications for variances of bulk and area requirements shall be considered by and may be approved by the Board of Adjustment.
 - (2) *Public hearing.* A public hearing shall be held.
 - (3) *Findings.* The Board of Adjustment shall make the following findings:
 - (a) *Minimum variance.* 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.
 - (b) *Harmony with general purpose.* The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of zoning, Chapters 1 through 5, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
 - (c) *Conditions and safeguards.* In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the zoning regulations.

(d) *No variance allowed.* Under no circumstances shall the Board of Adjustment grant a variance to allow use not permissible under zoning in the district involved, or any use expressly, or implication prohibited by the terms of the zoning regulations in said district.

(4) *Vote.* The concurring vote of a majority of the members present shall be necessary to decide in favor of the applicant on any matter upon which it is required to pass or to effect any variation in the application.

13.03 Sign Regulations

Consideration by the Planning Commission. The Planning Commission shall not grant any variance of Chapter 9, Signs, unless and until an applicant demonstrates:

- (A) *Special conditions.* 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 building in the same district.
- (B) *Deprivation of rights.* That literal interpretation of the provisions of the sign regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the sign regulations.
- (C) *Resulting actions.* That the special conditions and circumstances do not result from the actions of the applicant.
- (D) *No special privileges.* That granting the variance requested will not confer on the applicant any special privilege that is denied by Chapter 9, Signs, to other lands, structures, or building in the same district.
- (E) *Nonconforming uses.* No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (F) *Time Limitation.* Any variance granted shall automatically be revoked if the applicant does not comply with the terms of the variance within 90 days from the granting thereof; and, the applicant shall be required to comply with the literal provisions of Chapter 9, Signs.
- (G) *Prohibited.* The Planning Commission shall not permit as a variance any sign the erection of which or the continuance of which is prohibited by Chapter 9, nor shall any variance be granted to allow a greater number of signs than specifically set forth therein.

Content Neutrality; Restrictions. The Planning Commission shall not take into account the content of any message sought to be displayed on the sign when determining whether to grant a variance. Variances can only be granted for setbacks, area, height, the proposed on-site location of the sign, or other technical requirements, and shall not exceed 15% of the Code requirement.

13.04 Floodplain Regulations

Consideration by the Planning Commission. Applications for variances of the floodplain regulations shall be considered by the Planning Commission.

- (A) Applicants must submit petitions for variances directly to the Planning Commission.
- (B) Variances may only be issued:
 - 1) if showing a good and sufficient cause;
 - 2) granting of the variance will not result in any adverse impact upon other lands;
 - 3) if granting of the variance will not result in any additional threats to public safety;
 - 4) if granting of the variance will not result in extraordinary public expense;
 - 5) if granting of the variance does not create a nuisance, cause fraud or victimization of the public, or conflict with existing laws or ordinances;
 - 6) if granting of the variance will not result in increased flood heights or an increase in expected flood velocities;
 - 7) if the requested variance is the minimum necessary, considering the flood hazards, to afford the necessary relief; and
 - 8) upon determination that the requested variance is necessary to avoid an extraordinary hardship to the applicant.
- (C) Variances may not be issued for developments inside a regulatory floodway unless
 - 1) all requirements of 44 CFR §65.12 are first met; or
 - 2) the following requirements are met:
 - a. a No-Rise Certificate signed and sealed by a Professional Engineer licensed to practice in the State of

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Arkansas is submitted to document that no increase in the base flood elevation would result from granting a variance for the proposed development;

- b. protective measures are employed to minimize damages during flooding events; and
 - c. the variance does not result in any adverse impact to other lands.
- (D) Examples of developments for which variance petitions may be appropriate include but are not limited to
- 1) the new construction of, or substantial improvement to, a structure on a lot of 1/2 acre or less in size that is surrounded by contiguous lots with existing structures constructed below the base flood elevation;
 - 2) for the reconstruction, rehabilitation or restoration of an historical structure, provided that:
 - a. the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and
 - b. the variance is the minimum necessary to preserve the historic character and design of the structure.
 - 3) the new construction of, substantial improvement to, or other development necessary to conduct a functionally dependent use, provided that:
 - a. the criteria outlined in Article 2, Section E, (3) and (4) and Article 2, Section F are met, and
 - b. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.