

CHAPTER 1129  
Variances

- 1129.01 Purpose.
- 1129.02 Basis for granting variances.
- ~~1129.03 Granting of variances.~~
- 1129.0~~3~~<sup>34</sup> Procedure for consideration of applications for variance.

1129.01 PURPOSE.

The purpose of this chapter is to permit deviation from the strict application of the terms of this Zoning Ordinance. **Use variances are prohibited.**

1129.02 BASIS FOR GRANTING VARIANCES.

- (a) Where, by reason of the exceptional narrowness, shallowness, or unusual shape of a parcel of property, or by reason of exceptional topographic conditions, or **any** other extraordinary situation or condition of such parcel of property, ~~or of the use or development of property immediately adjoining the parcel of property in question,~~ the literal enforcement of the requirements of this Zoning Ordinance would involve practical difficulties that would ~~unnecessarily~~ deprive the owner of the reasonable use of the land or buildings involved, the Board of Zoning Appeals shall be granted the authority to authorize a variance.
- ~~(b) In no case shall a variance be granted to permit a use other than a use permitted in the district in which the property in question is situated.~~
- ~~(b)~~ (e) Neither ~~personal, nor family, nor financial difficulties, nor the~~ loss of prospective profits ~~nor the~~ existence of neighboring violations shall **not** constitute justification for a variance.
- ~~(c)~~ (d) In no case shall a variance be granted when it would be injurious to ~~either~~ immediately adjacent property **owners** or the surrounding neighborhood.
- ~~(e) No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.~~

~~1129.03 GRANTING OF VARIANCES.~~

~~No variance of the strict application of this Zoning Code shall be granted by the Board of Zoning Appeals until and unless the Board finds the following:~~

- ~~(a) There exist conditions and/or circumstances relating to the property that would create practical difficulties for the property owner if strict conformance to the requirements of this Zoning Code was required.~~
- ~~(b) The variance to be granted is the minimum variance possible and other alternatives for resolving the conflict between the applicant's plan and the requirements of the Zoning Code are impractical or infeasible.~~
- ~~(c) The granting of the variance will be in harmony with the general spirit, intent and purpose of this Zoning Code.~~

- ~~(d) The granting of the variance will not be injurious to surrounding properties and the general neighborhood or be otherwise detrimental to the public welfare.~~
- ~~(e) The granting of the variance will not result in a deleterious change in the character of the community.~~
- ~~(f) The granting of the variance will not infringe upon the rights and quiet enjoyment of adjacent property owners and will not diminish property values, endanger the public safety, or create a public nuisance.~~
- ~~(g) The granting of the variance is for a compelling reason and not simply because the applicant's plans conflict with the Zoning Code requirements when reasonable alternatives are available.~~
- ~~(h) The granting of the variance is not solely for economic benefit to the applicant.~~

~~1129.034~~ PROCEDURE FOR CONSIDERATION OF APPLICATION FOR VARIANCE.

- ~~(a) The Board of Zoning Appeals shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance, and that the items in 1129.03 have been fully satisfied.~~
  - ~~(1) The Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. The Board may require a bond or irrevocable letter of credit to assure conformance to such conditions and safeguards as the Board may require.~~
  - ~~(2) Violation or noncompliance of such conditions and safeguards when such are made a part of the terms under which a variance is granted shall cause the bond or letter of credit mentioned in division (a) above to be forfeited or called upon and shall further be deemed a violation of this Zoning Code.~~
  - ~~(3) Prior to taking action on a request for a variance, the Board of Zoning Appeals shall hold a public hearing within forty five days of the receipt of an application for a conditional use permit. In addition, the Board shall provide a notice of public hearing in a newspaper of general circulation in Trotwood not less than ten days prior to the date of such hearing, and shall be responsible for notifying by mail, at least ten (10) days in advance of such hearing, all property owners within 300 feet of the premises in question.~~
- ~~(b) Period of Validity. No variance granted by the Board of Zoning Appeals shall be valid for a period longer than one year from the date on which the Board grants the variance unless within such period unless a zoning permit is obtained and the construction, moving or remodeling of the structure is started, or an occupancy permit is obtained and a use commenced. The Board may grant a maximum of two extensions not exceeding six months each, upon written application, without notice of hearing.~~
- ~~(c) Upon approval of a variance application by the Board of Zoning Appeals the variance applies to the property and is not limited to the term of the applicant's ownership of the premises. Any condition imposed when granting a variance must be directly related to the property involved and to the underlying purpose of the zoning code, without consideration of the particular person owning or occupying it.~~
- (a) Application. A fully complete application for a variance must be filed with the Zoning Administrator. When the Zoning Administrator is satisfied that all of the materials required by this chapter are included in the application and that the application contains sufficient information to satisfy the intent of the application requirements, it will be placed on the agenda for a hearing before the Board of Zoning Appeals. Applicants are encouraged to have a preapplication meeting or conference with the Zoning Administrator prior to submission of the application to discuss the nature of the requested variance and the application process.**

**(1) Contents of application. The application for variance shall include, at a minimum, the following:**

- (A) The applicant's name, address, telephone number, and email address;**
- (B) The property owner's name, address, telephone number, and email address;**
- (C) The lot number and parcel identification number;**
- (D) The address of the property where the variance is sought;**
- (E) The zoning district of the property where the variance is sought;**
- (F) The Zoning Ordinance sections that are relevant to applicant's variance request;**
- (G) An explanation as to the reason for the requested variance; and**
- (H) An indication as to whether options other than a variance have been considered, and if other options have been considered, what were those options considered.**

**(2) Submittals required with application. The following items must be submitted with an application for a variance:**

- (A) A copy of the vicinity map of the area that designates the site involved;**
- (B) A copy of the site plan involved, drawn to standard engineers scale of 1 inch equals 20 feet, 1 inch equals 30 feet, or 1 inch equals 40 feet, as directed by the Zoning Administrator. The site plan may be a single-line drawing and must show dimensions, building location and dimensions, and setbacks from lot lines. The site plan must also indicate all of the following:**
  - (i) The location of the right-of-way;**
  - (ii) The location and size of existing buildings and accessory structures;**
  - (iii) The location of storm water and sanitary sewers;**
  - (iv) The location of water/well;**
  - (v) The location of septic tank/leach bed;**
  - (vi) The location of gas lines;**
  - (vii) The location of drainage and utility easements;**
  - (viii) The location of property lines involved (multiple parcels if affected);**
  - (ix) The location of any other on-site landmarks affected by the requested variance;**
  - (x) The location of regulatory floodplain, if any portion of the parcel is located within a floodplain;**
  - (xi) Construction drawings for any new buildings;**
  - (xii) Any other plans, brochures, pamphlets, or other materials applicable to the application; and**
  - (xiii) The requisite application fee.**

**(b) Reapplication.**

- (1) No application for variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked or expired, shall be submitted for consideration for at least one year after the prior determination. The Zoning Administrator shall determine if a similar application differs enough to be considered a different application and not subject**

to this subsection. The Zoning Administrator may consider factors that include, but are not limited to, the nature or size of the proposal, changes in the development or traffic patterns of the area, or newly discovered evidence pertinent to a decision on a previous application.

- (2) Any decision made by the Zoning Administrator with respect to the preceding paragraph may be appealed to the Board of Zoning Appeals pursuant to section 1127.02 of this Zoning Ordinance. Any appeal taken must be submitted in writing and received by the Zoning Administrator within fifteen days of the Zoning Administrator's decision.

(c) Board of Zoning Appeals review. The Board of Zoning Appeals shall base its review of a variance application upon the complete application, any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudicatory hearing. If the Board of Zoning Appeals finds that the information presented at hearing is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

- (1) Burden of proof. The applicant is required to present proof, by a preponderance of reliable, probative, and substantial testimony and evidence, that the property owner will suffer practical difficulties in the use of the property if the variance is not granted.

- (2) Decision standards. The Board of Zoning Appeals will consider the variance request while also considering the public health, safety, and welfare of the community. Variances shall only be granted upon a determination that practical difficulties exist with respect to the property in question that would render the strict application of the Zoning Ordinance unreasonable. The Board of Zoning Appeals may only consider evidence and testimony presented at hearing, and it shall not consider other variances granted in the community, unless an applicant specifically introduces evidence and testimony regarding other variances granted in the same zoning district. In the event an applicant intends to introduce evidence at hearing as to other variances granted in the same zoning district, the applicant must provide the Zoning Administrator with notice of his intent to introduce such evidence at least seven days prior to the scheduled hearing. In determining whether practical difficulties exist that are sufficient to warrant a variance, the Board of Zoning Appeals shall consider and weigh the following factors

(A) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(B) Whether the requested variance is substantial;

(C) Whether the essential character of the neighborhood would be substantially altered, or whether adjoining property owners would suffer a substantial detriment if the variance were granted;

(D) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage, fire rescue, and the like);

(E) Whether the property owner purchased the property with knowledge of the zoning restrictions;

(F) Whether the property owner's predicament can feasibly be obviated through some method other than a variance;

(G) Whether the spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance; and

(H) Any other relevant factor.

**(d) Action by Board of Zoning Appeals.**

- (1) Prior to taking action on a request for a variance, the Board of Zoning Appeals shall hold a public hearing within forty-five days of receipt of a fully complete variance application, unless the time for the hearing is extended by agreement of the applicant and the City, Notice of the public hearing will be published as required by law, and notice of the scheduled hearing shall also be provided by the City to all property owners within 300 feet of the property, by ordinary mail, at least ten days prior to the scheduled hearing.**
- (2) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented, and it shall clearly state the findings upon which its decision is based on the record. The Zoning Administrator, or the Zoning Administrator's designee, shall prepare and issue a written notification to the applicant memorializing the Board of Zoning Appeals' decision and the findings upon which the Board of Zoning Appeals decision is based.**
- (3) The Board of Zoning Appeals shall base its decision only upon the decision standards set forth in this chapter. No one decision standard set forth in section (C)(2) above is controlling, and the Board of Zoning Appeals is not required to weigh each factor set forth above equally.**
- (4) When making its determination, the Board of Zoning Appeals may waive or modify the dimensional regulations prescribed by the Zoning Ordinance, or it may impose more strict regulations and any additional conditions, guarantees, and safeguards as it deems appropriate to satisfy the purposes and intent of the Zoning Ordinance.**

**(e) Issuance of permits.**

- (1) The Zoning Administrator shall issue permits authorizing the action for which the variance was sought if the requested variance is granted by the Board of Zoning Appeals. Construction permits shall not be issued unless the plans substantially conform to those upon which a variance was granted. Any action that exceeds a granted variance shall constitute a violation of the Zoning Ordinance.**
- (2) No order of the Board of Zoning Appeals that grants a variance which, as a result, permits the erection or alteration of a building, shall be valid for a period of more than one year, unless all requisite permits for the construction or reconstruction of the building have been obtained and the work at the site has commenced. The one-year validity period may be extended by the Zoning Administrator, at the Zoning Administrator's discretion, if the applicant makes a written request for an extension of time to the Zoning Administrator before the expiration of the one-year term. If the Zoning Administrator denies the request for an extension of time, the Zoning Administrator's decision may be appealed to the Board of Zoning Appeals pursuant to section 1127.02. Any appeal taken must be submitted in writing to the Zoning Administrator within fifteen days of the Zoning Administrator's decision.**

**(f) Effect of variance.**

**Upon approval of a variance application by the Board of Zoning Appeals, unless the approval expires pursuant to subsection (E)(2) above, the variance shall continue to apply to the property, even if the property is subsequently transferred to a new owner.**