

# CHAPTER 12: VARIANCES AND APPEALS

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**Section 12.1 Variances**

**12.1.1 Purpose and Scope**

The variance process administered by the Board of Adjustment is intended to provide relief from the zoning requirements of this Ordinance in those cases where strict application of a particular zoning requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the zoning requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements of this Ordinance render the land impractically difficult or impossible to use because of some unique physical attribute of the property itself, or some other factor unique to the property for which the variance is requested.

**12.1.2 Provisions which may not be varied by the Board of Adjustment**

In no event shall the Board of Adjustment grant a variance:

- A. That would allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification of any or all of the affected property;
- B. From any written conditions attached by the Village Council to its approval of a special use permit, subdivision plat, site plan, conditional district or from the stated terms of an approved master land use plan for a special planned development.

**12.1.3 Application Requirements and Determination of Completeness**

- A. An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government which is not the owner of the Lot but proposes to acquire the Lot by purchase, gift, or condemnation. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Village with written documentation the owner of the property has authorized the filing of the application;
- B. An application for a variance shall be filed with the Administrator on a form prescribed by the Administrator, along with the fee prescribed by the Village Council;
- C. The application shall contain, or be accompanied by, such information and plans as required on the application form;
- D. The Administrator shall determine whether the application for a variance is complete. If the Administrator determines that the application is not complete, the applicant shall be notified of any deficiencies. The Administrator shall take no further steps to process the application until the deficiencies are remedied. Once the application is complete, the Administrator shall transmit the application to the Board of Adjustment and schedule the application for consideration at a quasi-judicial public hearing before the Board of Adjustment;

**12.1.4 Action by the Board of Adjustment**

- A. Upon receiving the application materials from the Administrator, the Board of Adjustment shall hold a quasi-judicial public hearing on the proposed variance. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with Chapter 3 of this Ordinance;
- B. In considering the application, the Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Board of Adjustment at the public hearing;
- C. After conducting the quasi-judicial public hearing, the Board of Adjustment may:
  - (1) Deny the application;
  - (2) Conduct an additional public hearing on the application;
  - (3) Grant the requested variance;
  - (4) Grant the requested variance with conditions as provided for in (F) below.
- D. The decision of the Board may be rendered at the meeting at which the case is heard or at a subsequent meeting.
- E. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Section 12.1.5 below, stating the reasons for such findings;
- F. The Board of Adjustment shall not grant any variance unless there is a concurring vote of at least four-fifths (4/5) of its members present at the meeting, who are not excused from voting, as long as a quorum is present;
- G. In granting any variance, the Board of Adjustment may attach such conditions to the approval, as it deems necessary and appropriate to satisfy the standards set forth in Section 12.1.5, to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance.

**12.1.5 Standards of Review**

The Board of Adjustment shall not grant a variance unless and until it makes the following findings:

- A. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structure, or buildings located in the same zoning district;

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- B. That the literal interpretation and strict enforcement of the provision to be varied would deprive the applicant of rights commonly enjoyed by other properties located in the same zoning district under the terms of this Ordinance;
- C. That the special conditions and circumstances do not result from the actions of the applicant;
- D. That the practical difficulty or undue hardship complained of is due to the particular characteristics of the property and not to the general conditions of the neighborhood. A hardship particular to the applicant or applicant's property, as distinguished from hardships caused to properties in the neighborhood, by the Ordinance, must be shown;
- E. That granting the proposed variance will not confer on the applicant any special privilege that this Ordinance denies to other land, structures, or buildings located in the same zoning district.

### 12.1.6 Effect of Approval or Denial

- A. After the Board of Adjustment approves a variance, the applicant shall follow the procedures set forth in Chapter 3 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted to the applicant by the Board of Adjustment;
- B. The Board of Adjustment shall refuse to hear a variance request that has previously been denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

### 12.1.7 Appeal

Appeals from the decision of the Board of Adjustment in a variance determination shall be to the Village Council. Any such petition to the Village Council shall be filed with the Village Clerk no later than thirty (30) days after the effective date of the Board of Adjustment's determination is filed in the Administrator's office or after the date a written copy of the decision is delivered to every party who has filed a written request for such copy with the Board of Adjustment at the public hearing, whichever is later. A copy of the decision shall be delivered to all parties either by personal delivery or by depositing a registered or certified mail, return receipt requested copy of the determination in a U.S. mailbox.

Such appeal shall be heard by the Village Council *de novo*, i.e. the Council shall consider the matter as if it had not been considered by the Board of Adjustment. The appeal shall be heard by Village Council at the next regular meeting of the Council following the date that the appeal is filed with the Village Clerk the Council shall decide the appeal by a majority vote of those present and not excused from voting. The decision of the Council on such matters shall be subject to review by Moore County Superior Court in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court clerk no later than thirty (30) days after the effective date of the Village Council's determination is filed in the Administrator's office or after

the date a written copy of the decision is delivered to every party who has filed a written request for such copy with the Village Council at the public hearing, whichever is later. The copy of the decision shall be delivered to all parties either by personal delivery or by registered or certified mail, return receipt requested.

## **Section 12.2 Appeals of Administrative Decisions**

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### **12.2.1 Purpose and Scope**

It is the intention of this Section that the Administrator has the sole authority to make initial interpretations of any portion of this Ordinance except to the extent that questions concerning the interpretation of the Ordinance arise in the context of the consideration of an application for a permit not issued by the Administrator. In that case the interpretation shall be made by the issuing Authority when the permit is considered. Requests for interpretations shall be in writing and filed with the Village Clerk. The Clerk shall forward such request to the Administrator. All determinations by the Administrator shall be in writing and shall be rendered not later than 30 days after the date on which the request was filed with the Village Clerk. The Administrator may consult with any other person having technical expertise or other knowledge of the matter at hand, but the final decision is the Administrator's. The written determination by the Administrator shall include a description of all parties' right to appeal the Administrator's determination, including the time in which such appeal must be filed, and the manner of filing.

Appeals to the Board of Adjustment from decisions of the Administrator on land use matters are allowed under this Ordinance in order to ensure that administrative decisions and enforcement actions taken by the Administrator are consistent with the terms and purposes of this Ordinance and related policies adopted by the Village. Questions of the interpretation of the Ordinance shall be presented to the Board of Adjustment only on appeal from the decisions of the Administrator. The recourse from the decision of the Board of Adjustment shall be to the Village Council.

### **12.2.2 Decisions which may be Appealed**

Any order, requirement, permit, decision, determination, or refusal made by the Administrator in administering or enforcing the provisions of this Ordinance may be appealed to the Board of Adjustment.

### **12.2.3 Persons who may File an Appeal**

An appeal to the Board of Adjustment may be brought by any person, firm, corporation, office, department, board, bureau or commission aggrieved by the order, requirement, permit, decision, or determination which is the subject of the appeal.

### **12.2.4 Filing of Appeal**

An application for an appeal shall be filed with the Village Clerk on a form prescribed by the Village Clerk, along with the filing fee set forth in the Fee Schedule. The application shall be filed no later than thirty (30) days after the date of the contested action, except that, if the contested action is one about which the appellant has not received actual oral or written notice, then the application must be filed within thirty (30) days after the appellant has received constructive notice of the contested action.

- A. The Administrator shall determine whether the appeal application is complete. If the Administrator determines that the appeal application is not complete, then the applicant shall be notified of any deficiencies and the Administrator shall take no further steps to process the application until the deficiencies are remedied. Once the appeal application is complete, the Administrator shall transmit the appeal application and other records pertaining to such appeal to the Board of Adjustment and schedule the appeal for consideration at a quasi-judicial public hearing before the Board of Adjustment;
- B. The filing of an appeal shall stay all proceedings in furtherance of the contested action, unless the Administrator certifies to the Board of Adjustment that, by reason of facts stated in the certification, such a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order granted by the Board of Adjustment or by the Moore County Superior Court on notice to the Administrator, with due cause shown.

**12.2.5 Action by the Board of Adjustment**

- A. Upon receiving the application materials from the Administrator, the Board of Adjustment shall hold a quasi-judicial public hearing on the appeal. Notice of the quasi-judicial public hearing shall be provided and the public hearing shall be conducted in accordance with Chapter 3 of this Ordinance;
- B. Either at the public hearing or at a subsequent meeting, the Board of Adjustment shall adopt a resolution reversing, affirming, or modifying the contested action and include an effective date;
- C. In reversing, affirming, or modifying the contested action, the Board of Adjustment shall have all relevant powers of the Administrator from whom the appeal was taken;
- D. The Board of Adjustment shall not reverse or modify the contested action unless it finds that the Administrator erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Village;
- E. The Board of Adjustment shall not reverse or modify the contested action unless there is a concurring vote of a majority of its members present at the meeting who are not excused from voting as long as a quorum is present.

**12.2.6 Effect of Reversal or Modification**

In the event that the Board of Adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Board of Adjustment.

**12.2.7 Appeal from the Board of Adjustment**

Appeals from the decision of the Board of Adjustment in regard to administrative review shall be to the Village Council in the same manner as appeals from variance decisions in Section 12.1.7.