

Sec. 50-51. - Variances.

The board shall have authority to grant upon such terms and conditions as it deems necessary. Where practical difficulties, unnecessary hardships or results inconsistent with the general purposes of this chapter would occur from strict literal interpretation and enforcement, variances that would be in harmony with the general purpose and intent may be considered. However, the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done as follows:

- (1) Permit such modification of the height, area and yard requirements as may be necessary to secure an appropriate improvement on a lot;
- (2) Permit the addition or enlargement of a nonconforming building, provided that such work complies with all height and area regulations of the zone in which it is located, and that the total aggregate floor area of such work does not exceed 50 percent of the floor area of the nonconforming building;
- (3) Permit the extension of an existing or proposed conforming use into an adjoining more restricted zone;
- (4) Permit the modification of the conditions under which specific uses are allowed in certain zones;
- (5) Permit the modification of the automobile parking or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of this chapter; and
- (6) Permit the repair of an existing nonconforming building as long as the value of the repairs does not exceed 50 percent of the appraised tax value.

(Ord. No. 2000-09, exh. A, § 3.D(3), 8-8-2000)

Sec. 50-52. - Conditions for considering variances.

No variance shall be granted by the board unless it finds:

- (1) Such variance will not be contrary to public interest.
- (2) Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.
- (3) Such variance will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district.
- (4) Such variance will not alter the essential character of the district in which it is located or the property for which the variance is sought.
- (5) Such variance will be in harmony with the spirit and purposes of this chapter.
- (6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to, or the result of, general conditions in the district in which the property is located.
- (7) The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district.
- (8) The variance will not adversely affect the health, safety or welfare of the public.

(Ord. No. 2000-09, exh. A, § 3.D(4), 8-8-2000)

Sec. 50-53. - Appeal to board.

Any person aggrieved by, or any officer, department, board, or bureau of the city affected by the decision of an administrative official's decision on matters contained within this chapter may appeal such decision to the board. An appeal is filed by the applicant submitting a completed notice of appeal, within 30 days after the decision of the administrative official's decision, along with the required fee, to the board, the zoning official and the official from whom the appeal is taken. The notice of appeal must contain a statement of the reasons the party appealing believes the decision appealed is not a correct decision. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(Ord. No. 2000-09, exh. A, § 3.D(5), 8-8-2000)

Sec. 50-54. - Application.

A person requesting a variance to any provision of the zoning regulations must submit an application to the zoning official along with the required fee. The zoning official may require that the applicant submit additional information necessary to undertake a complete analysis and evaluation of the variance request and to determine

whether the circumstances prescribed for granting the variance exists. The city, shall collect a fee as provided for in appendix A of this Code for each variance application submitted for consideration involving a public hearing. Informal discussions may be requested if no official action is to be taken.

(Ord. No. 2000-09, exh. A, § 3.D(6), 8-8-2000)

Sec. 50-55. - Board decision—Effective date.

No decision rendered by the board shall become effective until the expiration of ten days from the date of its decision.

(Ord. No. 2000-09, exh. A, § 3.D(7), 8-8-2000)

Sec. 50-56. - Same—Conditions.

The board may condition the granting of a decision in such means and manners as it deems just and reasonable. For example, it may condition the effectiveness of the decision upon the proposed construction being actually completed within a certain length of time, or carried on diligently to completion, and in the event that it is not, then the variance shall become null and void, or the board may stipulate certain construction requirements; provided, however, all matters brought before the board and granted are conditional upon the privileges being utilized within 180 days after the effective date thereof, or a new application must be made.

(Ord. No. 2000-09, exh. A, § 3.D(8), 8-8-2000)

Sec. 50-57. - Proceedings stayed.

The proper filing of an appeal stays all proceedings in furtherance of the action that is appealed, unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceeding may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(Ord. No. 2000-09, exh. A, § 3.D(9), 8-8-2000)

Sec. 50-58. - Public hearing.

The board of adjustment, acting through the zoning official, will schedule a public hearing on the appeal. A party may appear at the appeal hearing in person or by agent or attorney. At least ten days prior to the hearing, written notice of the time and place of the hearing must be given to the person filing the appeal and to all owners of adjoining properties within 300 feet, in the same manner in which adjoining properties are given notice of a hearing before the planning and zoning commission for a change in zoning classification.

(Ord. No. 2000-09, exh. A, § 3.D(10), 8-8-2000)

Sec. 50-59. - Burden of proof.

The burden of establishing that the decision appealed was wrong is the responsibility of the party bringing the appeal.

(Ord. No. 2000-09, exh. A, § 3.D(11), 8-8-2000)

Sec. 50-60. - Board decision after public hearing.

After the close of the public hearing, the board may reverse or affirm, in whole or in part, or modify the administrative official's decision from which an appeal is taken and make the correct decision. The board shall decide the appeal within 60 days after the date of the public hearing.

(Ord. No. 2000-09, exh. A, § 3.D(12), 8-8-2000)

Sec. 50-61. - Judicial review.

Any of the following persons may present to a court of record a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) A person aggrieved by a decision of the board;
- (2) A taxpayer; or
- (3) An officer, department, board or bureau of the city.

(Ord. No. 2000-09, exh. A, § 3.D(13), 8-8-2000)

Sec. 50-62. - Petition.

The following criteria shall be in force regarding the filling of a petition:

- (1) The petition must be presented to a court of record within ten days after the date the decision is filed with the board of adjustment or the zoning official.
- (2) On the presentation of the petition, the court may grant a writ of certiorari directed to the board of adjustment to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after ten days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application, and after notice to the board, the court may grant a restraining order if due cause is shown.
- (3) The board of adjustment's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original document on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.
- (4) If, at the hearing, the court determines that the testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(Ord. No. 2000-09, exh. A, § 3.D(14), 8-8-2000)

Sec. 50-63. - Court decision.

The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board of adjustments unless the court determined that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(Ord. No. 2000-09, exh. A, § 3.D(15), 8-8-2000)

State Law reference— Board of adjustment, V.T.C.A., Local Government Code § 211.008 et seq.