

154.08. VARIANCES**154.08.01 Purpose**

The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this Code that create unnecessary hardships. When such hardships may be more appropriately remedied, if at all, pursuant to other provisions of this Code, the variance procedure is inappropriate.

154.08.02 Authority

- A.** The Board of Zoning Appeals may authorize upon application in specific cases such variances from the terms of this Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code would result in serious practical difficulty. No non-conforming 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 issuance of a variance. Variances shall not be granted solely on the grounds of convenience or profit; however, where strict application of the provisions of this Code would result in serious practical difficulty, convenience or profit may be considered as a relevant factor in the Board decision.
- B.** In addition, the Board of Zoning Appeals may consider land use variances in cases in which a proposed use for a property does not fall within the list of permitted or conditional uses for the zone district in which it is located.

154.08.03 Parties Entitled to Seek Variance

An application for a variance may be filed with the Planning Director by the owner or lessee of the subject property or other person having a legal or equitable interest in the subject property.

154.08.04 Procedure for Review and Decision**A. Application**

Applications for Variances shall be filed in accordance with the requirements of Section 154.01 of this Code.

B. Site Plan Review

Site Plan Review shall be conducted by the Planning Director in accordance with the requirements of Section 154.03. of this Code.

C. Public Hearing and Notice

The Board of Zoning Appeals shall hold a public hearing on the application in accordance with the requirements of 154.01 Notice for the public hearing shall be provided in the manner prescribed by 154.01.

D. Action by Board of Zoning Appeals

Within forty-five (45) days after the close of the public meeting, the Board of Zoning Appeals shall in writing either approve, approve with supplementary conditions, or disapprove the application. If the application is approved or approved with modifications, the Board of Zoning Appeals shall instruct the Planning Director in writing to issue a Variance Permit listing the variance allowed and the specific conditions specified by the Board of Zoning Appeals for approval. If the application is disapproved by the Board of Zoning Appeals, it shall notify the applicant in writing.

E. Review by Certiorari

Every decision by the Board of Zoning Appeals shall be subject to review by certiorari. Any person aggrieved by a decision of the Board of Zoning Appeals may present to the Circuit Court of Madison County a petition duly verified setting forth that such decision is illegal in whole or in part and specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the entry of the decision or order of the Board of Zoning Appeals.

154.08.05 Findings of Fact for Variances

A. Findings of Fact

Every application for a variance shall meet the requirements of this Section 154.08 and the general standards for variances set forth below.

1. **Compliance** A variance from the terms or land use of this Code shall not be granted unless the Board of Zoning Appeals makes specific written findings of fact based directly on the particular evidence presented to it which support conclusions that all of the standards and conditions imposed by this Section 154.08 and any conditions imposed by the Board of Zoning Appeals upon the recommendation of the Planning Director have been met.
2. **Hardship** No variance shall be granted pursuant to this Section 154.08 unless the applicant shall establish that carrying out the strict letter of the provisions of this Code would create a particular hardship or a practical difficulty.
3. **Unique Physical Condition** The subject lot is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition, including presence of an existing use, structure, or sign, whether conforming or nonconforming; irregular or substandard shape or size; exceptional topographical features; or other extraordinary physical conditions peculiar to and inherent in the subject lot that amount to more than a mere inconvenience to the owner and that relate to or arise out of the lot rather than the personal situation of the current owner of the lot.
4. **Not Self-Created** The aforesaid unique physical condition is not the result of any action or inaction of the owner or its predecessors in title and existed at the time of the enactment of the provisions from which a variance is sought or was created by natural forces or was the result of governmental action, other than the adoption of this Code.
5. **Denied Substantial Rights** The carrying out of the strict letter of the provision from which a variance is sought would deprive the owner of the subject lot of substantial rights commonly enjoyed by owners of other lots subject to the same provision.
6. **Not Merely Special Privilege** The alleged hardship or difficulty is neither merely the inability of the owner or occupant to enjoy some special privilege or additional right not available to owners or occupants of other lots subject to the same provision, nor merely the inability of the owner to make more money from the use of the subject lot.
7. **Ordinance and Plan Purposes** The variance would not result in a use or development of the subject lot that would be not in harmony with the general and specific purposes for which this Code and the provision from which a variance is sought were enacted or the general purpose and intent of the Comprehensive Plan.
8. **No Other Remedy** There is no means other than the requested variance by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject lot.
9. **Minimum Required** The requested variance is the minimum measure of relief necessary to alleviate the alleged hardship or difficulty presented by the strict application of the Ordinance.

B. Additional Findings of Fact for Land Use Variances

In addition to requirements and general standards set forth in subsection (A) above, the Board of Zoning Appeals shall, in weighing the appropriateness of a variance for land use, consider the following:

1. The land use variance shall not be materially detrimental to the public health, safety, morals, and general welfare or materially injurious to the enjoyment, use, development, or value of property or improvements permitted in the vicinity.
2. The variance would not result in a use or development on the subject lot that would substantially affect the use and value of the area adjacent to the subject property in an adverse manner, including but not limited to, impairing an adequate supply of light and air to the properties and improvements, substantially increasing congestion in the public streets due to traffic or parking, unduly increase the danger of flood or fire, or unduly tax public utilities and facilities in the area.

154.08.06 Variance Less Than Requested

The Board of Zoning Appeals may grant variance less than or different from that requested when the record supports the applicant's right to some relief but not to the relief requested.

154.08.07 Conditions on Variances

The Board of Zoning Appeals may impose such specific conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of this Code upon any lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject lot or upon public facilities and services. Such conditions shall be expressly set forth in the ordinance or order granting the variance. Violation of any such condition or limitation shall be a violation of this Code and shall constitute grounds for revocation of the variance.

154.08.08 Effect of Grant of Variance

The grant of a variance shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing, and processing of applications for any permits and approvals that may be required by the Ordinances and codes of the Town.

154.08.09 Limitations on Variances

- A. Subject to an extension of time granted by Planning Director, no variance from the provisions of this Code shall be valid for a period longer than six (6) months unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion or unless a Certificate of Occupancy is issued and a use is commenced within that period.
- B. A variance shall be deemed to authorize only the particular construction or development for which it was issued and shall automatically expire and cease to be of any force or effect if such construction or development is beyond the scope so authorized.