

## Sec. 16-24-60. - Variances.

- (a) Subject to the requirements of this section, variances from the requirements of this Chapter may be granted by the Board of Adjustment when the circumstances and conditions of a property are exceptional or extraordinary such that they do not apply to property generally within the City and such that denial of an application for relief from the requirements of this Chapter would result in an inability to reasonably utilize the property. In reviewing applications for variances under this Section, the burden shall be upon the applicant to meet the criteria set forth herein.
- (b) The Board of Adjustment shall not approve a variance from the requirements of this Chapter unless all of the following criteria are met:
  - (1) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district;
  - (2) The extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief;
  - (3) The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole;
  - (4) The granting of the variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character;
  - (5) The granting of the variance shall not be substantially inconsistent with any plans adopted by the City;
  - (6) The granting of the variance shall not materially weaken the general purpose of this Chapter 16 or any other zoning regulations of the City;
  - (7) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property; and
  - (8) The unique conditions of the property under which the variance is sought were not created by the owner of the property or his or her agent.
- (c) No variance authorizing a change in the permitted or conditional uses of property shall be granted.
- (d) Conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property and may relate to specific persons or organizations which have a direct association with the use of the property as contemplated by the requested variance. Every variance authorized hereunder shall be transferable and shall run with the land unless expired pursuant to subsection (e ) below.
- (e) A variance granted pursuant to this Section shall expire within two (2) years from the date of final approval if action has not been taken within said time. This time may be extended with the approval of the Board of Adjustment if the petitioner can show good cause. For purposes of this

Subsection, action means obtaining a building permit or other applicable City permit/license pursuant to the granting of the variance, or if a permit or license is not required, the right that is granted pursuant to the variance is put to use.

- (f) When an application for a variance from the terms of this Chapter has been denied by the Board of Adjustment, no application for the same or substantially the same variance may be filed with the Board of Adjustment for a period of one (1) year after the date the Board of Adjustment's decision denying the previous variance application becomes final.
- (g) The City Manager may administratively review and issue decision on an application for a variance requested as a reasonable accommodation required by the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) or other applicable state or federal law concerning equal access to dwellings. The City Manager shall apply the applicable legal standard, after consultation with the City Attorney, and issue written decision approving, conditionally approving or denying such an application. The decision shall be mailed to the applicant at the mailing address indicated in the variance application. An applicant may appeal the City Manager's decision to the Board of Adjustment pursuant to Section 16-24-30. Notice of a variance application approved or conditionally approved pursuant to this Subsection (g) shall be promptly sent by First Class U.S. Mail to all property owners within one hundred (100) feet of the subject property.

(Prior code 23-428; Ord. 07-09 §4; 2009; Ord. 10-14 §7, 2014; Ord. 2015-16, §1 2015; Ord. 2018-14 §4, 2018)