

## ARTICLE 20. APPEALS, VARIANCES, INTERPRETATIONS

### Section 20-1: Appeals

- (A) An appeal from any final order or decision of the administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the Town Hall, and the date and time of filing shall be entered on the notice by the staff.
- (B) An appeal must be taken within 30 days after the date of the decision or order appealed from.
- (C) Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.
- (D) An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.
- (E) The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

### Section 20-2: Variances

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator in the Town Hall.

Applications for a variance shall be made on the proper form obtainable from the Zoning Administrator and shall include the following information:

- (1) Ten copies of a site plan (if applicable), prepared by a licensed professional land surveyor, drawn to a scale of at least one inch equals forty feet (1"=40') that indicates:
  - (a) The property lines of the parcel upon which the use is proposed;
  - (b) Any existing or proposed structures, parking areas, and other built-upon areas;
  - (c) Surface water drainage (in cases where the request is from requirements of the Watershed Protection Overlay District requirements);
  - (d) North arrow;
  - (e) Name and address of the professional who prepared the plan; and
  - (f) Date of plan including an accurate record of any later revisions.
- (2) A complete and detailed description of the proposed variance, together with any pertinent information that the applicant feels would be helpful to the Board of Adjustment in considering the application.

Applications shall be handled in the same manner as applications for permits in conformity with the provisions of Sections 15-3 and 15-4.

- (B) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the Ordinance will be observed, the variance would be in harmony with the general purpose and intent of the Ordinance, public safety and welfare secured, and substantial justice done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or

general welfare. It may reach these conclusions if it finds that all of the following exist:

- (1) If the applicant complies strictly with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make no reasonable use of the applicant's property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of the applicant's property.
  - (2) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.
  - (3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
  - (4) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
  - (5) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.
  - (6) The variance will neither result in the extension of a nonconforming situation in violation of Article 23 nor authorize the initiation of a nonconforming use of land.
- (C) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. If

a variance for the construction, alteration, or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

- (D) A variance may be issued for an indefinite duration or for a specified duration only.
- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.
- (F) If the application calls for the granting of a Major Variance from a requirement of a Watershed Protection Overlay District, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
  - (1) The variance application;
  - (2) The hearing notices;
  - (3) The evidence presented;
  - (4) Motions, offers of proof, objections to evidence, and rulings on them;
  - (5) Proposed findings and exceptions; and
  - (6) The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

- (a) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that

1. The property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted;
2. The variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations.

The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the Commission approves the variance as proposed, the Board of Adjustment shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board of Adjustment shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

- (b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that:
1. The property owner can secure a reasonable return from or make a practical use of the property without the variance, or
  2. The variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed.

The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision denying the variance as proposed.

- (G) The Board of Adjustment may approve Minor Variances to the provisions of the Watershed Protection Overlay District regulations without the requirement of a review by the Environmental Management Commission.

### **Section 20-3: Interpretations**

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in Section 20-1.
  
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with administrator in the Town Hall. The application shall contain sufficient information to enable the Board to make the necessary interpretation.
  
- (C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
  - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerline;
  
  - (2) Boundaries indicated as approximately following lot lines, Town limits, or extraterritorial boundary lines, shall be construed as following such lines, limits, or boundaries. For the purposes of establishing the location of Watershed Protection Overlay District boundaries, a surveyed plat prepared by a licensed professional land surveyor may be submitted to the Town as evidence that one (1) or more of the properties along the boundaries do not lie within a Watershed Protection Overlay District;
  
  - (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines;
  
  - (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map. For the purposes of establishing the location of Watershed Protection Overlay District boundaries, where such boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of the Watershed Protection Overlay District shall be determined by use of the scale on the Official Zoning Map. Where the

boundary lies at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location shall be construed to be the lot line;

- (5) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in Section 16-10.

#### **Section 20-4: Requests to be Heard Expeditiously**

As provided in Section 15-12, the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article 21, and obtain the necessary information to make sound decisions.

#### **Section 20-5: Burden of Proof in Appeals and Variances**

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 20-1, the administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 20-2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

#### **Section 20-6: Board Action on Appeals and Variances**

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (see Section 3-4), then a motion to uphold the decision appealed from shall be in order. This motion is adopted as

the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).

- (B) Before granting a variance, the Board must vote affirmatively by a four-fifths majority of all members (see Section 3-4) on the six required findings stated in Section 20-2(B).
- (C) A motion to deny a variance may be made on the basis that any one or more of the six criteria set forth in Section 20-2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).