

## **ARTICLE 34 ADMINISTRATIVE VARIANCES**

### **Sec. 34.1. Authority.**

The Zoning Administrator shall have the power to authorize upon application in specific cases such administrative variances from the terms of this zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this zoning ordinance will in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of this zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The Zoning Administrator may upon application consider the approval, conditional approval, or denial of administrative variances, subject to the requirements of this Article. In granting an administrative variance, the Zoning Administrator may impose such requirements and conditions with respect to the location, construction, maintenance and operation of any use or building, in addition to those expressly set forth in this zoning ordinance, as may be deemed necessary for the protection of adjacent properties and the public interest.

### **Sec. 34.2. Provisions that May Be Administratively Varied.**

The following provisions of this zoning ordinance may be administratively varied by the Zoning Administrator, subject to the specific limitations of this Section:

- (a) Front building setback for a principal building, reduction not to exceed seven (7) feet.
- (b) Side building setback for a principal building, reduction not to exceed three (3) feet.
- (c) Rear building setback for a principal building, reduction not to exceed five (5) feet.
- (d) Setback for an accessory building, reduction not to exceed two (3 ) feet.
- (e) Maximum height of a building, not to exceed five (5) feet above the applicable maximum.
- (f) Landscape strip minimum widths, reduction not to exceed twenty percent (20%) of the minimum required width. For example, if the minimum landscape strip width is ten feet (10'), the Zoning Administrator may authorize a reduction to no less than eight feet (8'). The Zoning Administrator may also authorize an average width of landscape strip rather than a minimum.
- (g) The required number of parking spaces, as provided in this zoning ordinance.

### **Sec. 34.3. Initiation of Administrative Variance Applications.**

An application for variance may be initiated by any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which the administrative variance is sought.

### **Sec. 34.4. Application Requirements.**

Applications for administrative variance shall require submittal of an application requirements specified in this Section.

- (a) Application fee as specified by this ordinance or established by resolution of the Mayor and City Council;
- (b) Application form furnished by the Zoning Administrator, including signed and notarized signature of property owner;
- (c) Legal description of the property;
- (d) Survey plat of the property;
- (e) Letter of intent describing the proposed use of the property or other action requested;
- (f) Site plan of the property at an appropriate engineering scale showing the proposed use and relevant information regarding proposed improvements;
- (g) Statistics regarding the proposed development;
- (h) Written analysis of how the proposed action compares to decision criteria specified for deciding on the subject type of application;
- (i) Description of any special conditions voluntarily made a part of the request; and
- (j) Other information as may be required by the Zoning Administrator.

**Sec. 34.5. Site Plan Requirements.**

Applications for administrative variance shall include a site plan, which shall at minimum include on the site plan information specified in this Section. The Zoning Administrator may waive one or more of the requirements of this Section in individual cases when he/she determines that one or more elements of the required information specified in this Section are not essential to the review process.

- (a) Existing and proposed buildings and structures;
- (b) Other information as may be required by the Zoning Administrator to describe and/or graphically depict the requested administrative variance.

**Sec. 34.6. Application Compliance and Completeness.**

- (a) No administrative variance application shall be processed by the Zoning Administrator unless it complies with the procedural requirements of this Article and is found to be complete with regard to application materials, payment of fees, supportive materials, and any other application requirements specified by this Article.
- (b) If the variance application does not comply with all application submittal requirements of this Article, the Zoning Administrator shall reject the application and refuse to process it.

**Sec. 34.7. Criteria for Granting Variances.**

Any applicant requesting consideration of an administrative variance shall provide a written justification that one or more of the following condition(s) exist. The Zoning Administrator shall not approve an administrative variance application unless he or she shall have adopted findings that the one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

**Sec. 34.8. Procedures.**

Administrative variance applications shall be considered and processed in accordance with the requirements of this Section.

(a) Written Notice to Abutting Property Owners. At least fifteen (15) calendar days prior to a decision to grant an administrative variance, the Zoning Administrator shall notify in writing the owner of each property abutting the property pertaining to the application for administrative variance, citing the specific section or sections of the zoning ordinance proposed to be administratively varied, the amount of the variance, and the applicant's stated justification for an administrative variance.

(b) Property Owner Review and Comment. Each abutting property owner, including property located across the street or streets from the property that is the subject of the variance application, shall have ten (10) calendar days from the date such notice is received to consent or object to the granting of the variance by sending in writing to the Zoning Administrator an objection, stating the reason for the consent or objection to the granting of the variance. If consent is provided or any objection is made to the application for administrative variance in writing, the Zoning Administrator shall take that factor, and any information submitted there with, into consideration. Action by the Zoning Administrator, however, is not based exclusively on neighbor acceptance or opposition.

(c) Prior Consent of Abutting Property Owners. If the applicant for administrative variance secures the signatures of all abutting property owners consenting to the variance on a form approved by the Zoning Administrator which shall include the specific section or sections of the zoning ordinance proposed to be varied and the amount of the variance, the Zoning Administrator after verifying the abutting property owners by consulting the property ownership records of the City and that they have signed the consent form, shall determine the property owner review and comment period to be complete and shall have supporting grounds for acting on the request at any time thereafter. Approval by the Zoning Administrator, however, is not based exclusively on neighbor acceptance.

(d) Written Decision. To approve an administrative variance, the Zoning Administrator shall make written findings that the variance requested complies with the administrative variance criteria specified in this Article. The Zoning Administrator shall issue a written decision stating whether the administrative variance request is approved, approved with conditions, or denied.

(e) Notice of Decision to Deny. If denied, the Zoning Administrator shall state in the letter that the applicant denied an administrative variance may file an application for variance in accordance with Article 33 of this zoning ordinance. Said notice of decision shall also be provided to all abutting property owners on record as having consented to or objected to the administrative variance application.

(f) Notice of Decision to Approve When Objection Exists. If the administrative variance application was approved by the Zoning Administrator and an objection was made by an abutting property owner to the granting of the application, the letter shall indicate that the abutting property owner may appeal the variance as an administrative decision only if there is alleged to be an error in the action that is inconsistent with the requirements of this Article or the zoning ordinance generally.

#### **Sec. 34.9. Withdrawal of Application.**

An administrative variance application may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Zoning Administrator. No refunds of the application fee shall be provided in the case of a withdrawal.

#### **Sec. 34.10. Limitations on the Frequency of Filing Applications.**

No variance application affecting the same or any portion of property which was denied by the Mayor and City Council shall be accepted for filing by a property owner until twelve (12) months shall have elapsed from the date said application was denied by Mayor and City Council.

#### **Sec. 34.11. Appeal.**

(a) Denial. The Zoning Administrator's denial of an administrative variance shall not be appealed as an administrative determination by the subject property owner, but any applicant denied an administrative variance may file an application for variance with the Mayor and City Council pursuant to Article 35 of this zoning ordinance.

(b) Approval. The Zoning Administrator's approval of an administrative variance may be appealed as an administrative decision, but only if there is alleged to be an error in the administration or enforcement of this zoning ordinance. If such appeal is filed, it shall be processed and considered in accordance with Article 35 of this zoning ordinance. When the administrative variance application was approved by the Zoning Administrator with conditions, and in the case of the subject property owner finds such conditions are not acceptable, the applicant shall not be authorized to file an appeal of the administrative decision but may file an application for variance with the Mayor and City Council pursuant to Article 33 of this zoning ordinance.

#### **Sec. 34.12. Records.**

The Zoning Administrator shall keep public records of all administrative variances applied for and granted pursuant to this Article.

