
Sec. 94-38. - Variances.

- a. *Purpose and intent.* A variance is a departure from the dimensional or numerical requirements of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not as a the result of the action of the applicant, a literal enforcement of the chapter would result in unnecessary and undue hardship. A variance is authorized only for height, area, and size of structure or size of yards, open spaces, or landscape requirements of this chapter. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted due to the presence of nonconformities in the zoning district or adjoining zoning districts.
- b. *Authorized variances.* The zoning board of appeals shall have the authority to grant the following variances:
 1. A variance in the yard or area requirements of any district where there are unusual and practical difficulties in carrying out these provisions due to an irregular shape of the lot, topography, or other conditions. However, such variance shall not seriously affect any adjoining property or the general welfare.
 2. A variance when an owner can demonstrate that a strict application of the terms of this chapter relating to the construction or alteration of buildings or structures, the use of or relating to the use of the land will impose unusual and impractical difficulties, but not reduced financial value alone.
- c. *Unauthorized variances.*
 1. *Use variance.* A variance shall not be granted which would permit the establishment or expansion of a use in a district in which such use is not permitted by this chapter, or permit any use in a district expressly or by implication prohibited by the provisions of this chapter.
 2. *Special uses.* A variance shall not be granted which would permit the establishment or expansion of a special use in any zoning district; except with respect to projects that are subject to a special review located within the Northwood Mixed-use District (NMUD), the Currie Corridor Mixed-use District (CMUD), and the Broadway Mixed-use District (BMUD) application may be made to the planning board for variances and waivers of the applicable mixed-use district requirements following the criteria found in section 94-38 for variances and subsection 94-273(a)(2) for waivers.
 3. *Nonconforming and noncomplying uses.* Except as otherwise provided in this chapter, a variance shall not be granted which relates in any way to a noncomplying or nonconforming use.
 4. *Definitions.* A variance shall not be granted which modifies any definitions contained within this chapter.
 5. *Density.* A variance shall not be granted which would result in an increase in density greater than that permitted in the applicable zoning district regulations.
 6. *Consistency with comprehensive plan.* A variance shall not be granted which would be inconsistent with the comprehensive plan.
 7. *Parking.* A variance from the parking requirements of this chapter shall not be granted.
 8. *Planned developments.* A variance from any requirement, condition of development approval or other stipulation affecting a planned development or planned unit development shall not be granted.
- d. *Procedures.*
 1. *Applicant.* Any property owner may apply for a variance.
 2. *Applications.* The applicant must file an application for variance with the building and zoning department in a form approved by the planning and zoning administrator containing all the following information:
 - a. Identification of the specific provisions of this chapter from which a variance is sought and the decision of the planning and zoning administrator which requires the application;
 - b. The nature and extent of the variance requested and an explanation of why it is necessary; and
 - c. The grounds relied upon to justify the proposed variance.
 3. *Administrative recommendation filed.* In all variance proceedings held before the zoning board of appeals, the planning and zoning administrator shall review each application and the planning and zoning administrator shall file a recommendation on each application. Such recommendations shall be received, heard and filed prior to final action on any item before the board and shall be part of the record of the application.

4. *Public notice.* Notice shall be required for a public hearing regarding a request for a variance.
5. *Public hearing.* The zoning board of appeals shall hold a public hearing on an application within 30 days following its receipt from the planning and zoning administrator. At a public hearing, the zoning board of appeals shall receive testimony regarding the application from the planning and zoning administrator, applicant, or any other person having an interest in the proceedings.
6. *Criteria for granting variances.* As provided in F.S. ch. 166, to authorize any variance from the provisions of this chapter, the zoning board of appeals and the planning board shall find all of the following:
 - a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
 - b. The special conditions and circumstances do not result from the action of the applicant;
 - c. Granting the variance requested will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district;
 - d. Literal interpretation of the provisions of the regulations of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant;
 - e. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
 - f. The granting of a variance will be in harmony with the general intent and purpose of these regulations and the comprehensive plan;
 - g. The variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
 - h. The property cannot be put to a reasonable use which fully complies with the requirements of this chapter;
 - i. Nonconforming use of neighboring lands, structures, or buildings in the same zoning district and the permitted use of lands, structures, or buildings in other zoning districts shall not be considered grounds for the authorization of a variance; and
 - j. Financial hardship is not the only evidence of a hardship considered in the authorization of a variance.
- e. *Restrictions, stipulations, and safeguards.* The zoning board of appeals and the planning board may make the authorization of a variance conditional upon such restrictions, stipulations and safeguards it deems necessary to ensure its compliance with the purpose and intent of this chapter and its consistency with the comprehensive plan of the city. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. Such conditions, restrictions, stipulations, and safeguards may include but are not limited to a reasonable time limit within which the action for which the variance is sought shall be begun or completed or both, as well as provisions for extensions or renewals.
- f. *Decisions.* The zoning board of appeals and the planning board shall approve, approve with conditions, or deny the application, furnishing the applicant a written statement of the reasons for any denial. An affirmative vote of four members of the zoning board of appeals or five members of the planning board shall be necessary to reverse any order, requirements, decisions, or determination of the planning and zoning administrator. The same number of affirmative vote is required to decide in favor of an applicant on any matter upon which the board is required to act under the provisions of this section or to effect any variation in the application of this chapter.
- g. *Variance and waiver time limitation.*
 1. *Not associated with a concurrent review.* Variances or waivers not associated with a concurrent site plan review or special review within a mixed-use district shall become void 12 months following the date of the approval by the planning board unless a validly issued building permit has been issued and development has commenced, as defined in section 94-40. Prior to the expiration of this period, the applicant may request from the zoning board of appeals, in writing, a one-time six-month extension. Further extensions of time shall require a new application.
 2. *Associated with a concurrent review.* Variances or waivers associated with a concurrent site plan review, or special review within a mixed-use district shall be valid for the same duration as the associated site plan review or special review approval, inclusive of any authorized extensions for such approvals. Such variances or waivers shall become void upon the expiration of the associated site plan or special review approval, pursuant to section 94-40. Once a variance or waiver has been approved by the zoning board of appeals or the planning board, the applicant shall obtain site plan review or special review approval within six months of the date of approval of the variance or waiver, or the variance or waiver shall become void. Prior to the expiration of the six-month period, the applicant may request, in writing, that the planning director, or

designee, grant a time extension not to exceed three months. Any such extension shall be based on a demonstration by the applicant that a good-faith effort has been made to secure site plan review or special review approval, but that circumstances beyond the control of the applicant have prevented it. Further extensions of time shall require a new application.

- h. *Appeals.* Any persons aggrieved by a decision of the zoning board of appeals, or the planning board in the exercise of authority granted in this section, may appeal by common law writ of certiorari to a court of competent jurisdiction for judicial relief within 30 days after a decision by the zoning board of appeals or the planning board. The election of remedies shall lie with the appellant.
- i. *Special provisions for variations and exceptions to the subdivisions requirements.* Whenever the tract to be subdivided is of such unusual size or shape or is surrounded by such development or unusual conditions that the strict application of the requirements contained in [ARTICLE XI](#) of this chapter would result in real difficulties or substantial hardship or injustice, the city commission, after report by the planning board, may vary or modify such requirements so that the subdivider may develop his property in a reasonable manner, but so that, at the same time, the public welfare and interests of the city and surrounding area are protected and the general intent and spirit of this chapter is preserved.

(Code 1979, § 33-18; Ord. No. 4070-07, § 2, 7-30-2007; Ord. No. 4167-08, § 1, 9-22-2008; Ord. No. [5008-22](#), § 5, 07-25-2022)