

CHAPTER 812

ZONING ORDINANCE: VARIANCES

812-1. Regulations for Use and Design Standards Variances

The regulations set forth or identified in this chapter are provided to establish procedures, criteria and conditions which shall be met before the Board of Zoning Appeals may approve a use or design standards variance from the terms of this ordinance.

812-2. Application for Variance

A person desiring a variance from the terms of the Zoning Ordinance shall submit a written application for variance approval with the Administrator. An application for variance approval shall:

- (A) be made on the forms available at the Planning Department office and signed by the owner of the property subject to the variance request ("subject property") or by a person who has been authorized to sign the form by the owner. If the form is signed by a person other than the owner, the person must submit written documentation of his/her authority to sign the form (e.g., a letter from the owner which states that the person has been authorized to sign the form);
- (B) describe the specific use or standard for which the variance is sought;
- (C) be presented to the Administrator;
- (D) be accompanied by two (2) copies of an area map which shows the location of the subject property, the locations of related public and utility facilities (e.g., schools, sewer, etc.), the relationship of the subject property to the thoroughfare plans for the area;
- (E) be accompanied by two (2) copies of a site plan, drawn to an appropriate scale, which shows:
 - (1) the subject property;
 - (2) the location of all existing and proposed buildings, structures and improvements to be made to the subject property, including drainage and erosion control facilities and features;
 - (3) accurate dimensions of the parcel, buildings, parking areas and ingress/egress driveways;
 - (4) location, owner of record, zoning and use of adjacent properties, including the location, size and use of all structures within fifty (50) feet of the subject property;
 - (5) location, right-of-way and pavement width of all streets adjacent to the subject property; and,
 - (6) proposed connections to public utilities.

- (F) be accompanied by any other information reasonably required by the Administrator; and,
- (G) be accompanied by the fee established by the Plan Commission.

812-3. Variance Approval Procedure

Applications for variance approval shall be considered in accordance with the following procedures.

- (A) Within thirty (30) days after receiving a complete application, the Administrator shall schedule and announce the date and time of the Board of Zoning Appeals hearing on the application. At the time the hearing is scheduled, the Administrator shall provide the applicant with written notice of the hearing date and time.
- (B) Prior to the Board of Zoning Appeals hearing on the application, the Administrator shall review the application for compliance with the Zoning Ordinance. Following such review and prior to the hearing, the Administrator shall prepare and provide the Board of Zoning Appeals and the applicant with the Administrator's written comments and recommendation on the application, including the Administrator's opinion as to any effect with the proposed variance might have upon the Comprehensive Plan.
- (C) The Board of Zoning Appeals, and its representatives, at its discretion, may visit the subject property at any reasonable time during the review process.
- (D) Notice of the Board of Zoning Appeals hearing on the application for variance approval shall be published in two (2) local newspapers of general circulation at least ten (10) days prior to the hearing, in accordance with IC 5-3-1.
- (E) At least ten (10) days prior to the Board of Zoning Appeals hearing on the application for variance approval, the applicant, in the manner prescribed in the Board of Zoning Appeals Rules of Procedure, shall notify all interested parties of the public hearing by certified mail. Prior to the hearing, the applicant shall provide the Administrator with certified mail receipts demonstrating that the required notices were delivered or returned as undeliverable.
- (F) At least ten (10) days prior to the Board of Zoning Appeals hearing on the application for variance approval, the applicant shall post and maintain a sign on the subject property notifying those passing the property that a request for variance approval for the property has been made. The sign shall be provided to the applicant by the Administrator. The cost of the sign shall be borne by the applicant.
- (G) The Board of Zoning Appeals shall conduct a public hearing on the application for variance approval in accordance with the Board of Zoning Appeals Rules of Procedure.
- (H) Following the Board of Zoning Appeals hearing on the application for variance approval, the Board shall take action on the applicant's application. The Board may approve the application, approve the application with conditions, or deny the application.
- (I) The Board of Zoning Appeals shall make written findings of fact in support of its decision. The Administrator shall promptly provide the applicant with a copy of the Board's written findings.

- (J) If the Board of Zoning Appeals approves the application for variance approval, the Administrator may issue the applicant an improvement location permit and/or land use certificate subject to the conditions of variance approval and the provisions of the ordinance.
- (K) If the Board of Zoning Appeals denies the application for variance approval, the applicant may file an amended application. If the amended application is filed within six (6) months of the Board's denial of the original application, the applicant shall not be charged an application fee.

812-4. Environmental Impact Statement

With respect to use variances, The Board shall have the authority to require an applicant to perform an environmental impact study appropriate to the situation in which the use is proposed and to submit the results of the study to the Board.

812-5. Standards for Use Variance Approval

In order to approve a use variance, the Board must find that:

- (A) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (B) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- (C) the need for the variance arises from some condition peculiar to the property involved;
- (D) the strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and,
- (E) the approval does not interfere substantially with the Comprehensive Plan.

812-6. Standards for Design Variance Approval

In order to approve an application for a design standards variance, the Board must find that:

- (A) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (B) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and,
- (C) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

812-7. Conditional Approval

All variance approvals shall be considered to be conditional approvals. The Board

shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to ensure compatibility with surroundings). A variance approval may be denied or revoked where the applicant fails to comply with specific conditions made a part of the approval by the Board, or fails to comply with a reasonable request of the Board or the Administrator for furnishing specific information related to the proposed variance. Failure to comply with the conditions of approval shall constitute a violation of the Zoning Ordinance.

812-8. Relationship to Subject Property

Variance approval applies to the subject property and may be transferred with ownership of the subject property subject to the provisions and conditions prescribed by or made pursuant to the Zoning Ordinance.

[end of chapter]