

Sec. 5-303. - Setback variances.

In the event a variance in the existing setback regulations is necessary for the construction of a fallout shelter, the planning director ~~of planning and zoning~~ may grant such variance and make a special exception without the necessity of advertising and holding a public hearing ~~before the board of adjustments and appeals~~, provided however, that no fallout shelter shall be constructed unless there is a minimum distance ~~of three (3) feet between the shelter and the property line~~ consistent with the appropriate zoning district.

Sec. 11.5-33. - Variances prohibited.

Neither ~~the board of adjustment nor city commission~~ may ~~not~~ vary those distance restrictions imposed by section 11.5-30.

Sec. 22-59. - Design review.

(a) Applicability. All development requiring site plan approval, or development abutting arterial roads, which submits application for development subsequent to the enactment of this ordinance, shall be subject to the city's design review process. In addition, all city-sponsored development projects not subject to site plan review shall require administrative review and approval according to the guidelines of this section. Such development proposals shall be reviewed for consistency with the city's design review guidelines outlined in this chapter. Until such time as a separate design review board is established, the city's planning board shall function as the design review board and shall be responsible for such design review, which shall be completed as part of the development review process. Applications for design review approval must satisfy the application submission requirements and shall be submitted to the department of planning. Design review related to any changes to historic structures, or any new construction on an historic site or in an historic district shall be reviewed by the historic preservation board in lieu of the design review board in accordance with chapter 23. Use of obligatory verbs in this section such as "shall" and "must" are imperatives applicable as binding directives of the ordinance. Discretionary language such as "should," "may," "might," and "is encouraged" are applicable as general guidance for design choices. Design choices based on discretionary language will be subject to the assessment and recommendation of the ~~director of planning~~ director and the design review board.

(c) Submission requirements. Applications for design review approval shall be submitted on a supplemental application form as published by the planning department ~~of Planning~~ along with the appropriate fee as required by section 22-142, Filing fees. All presentation materials shall include a graphic scale and may include scale figures of pedestrians, vehicles and other common elements found

in the public environment. The following materials must be submitted with an application, unless waived by city administrative staff as not necessary, before an application shall be considered complete and accepted for review:

(d) Procedure for approval. When site plan approval is required pursuant to section 22-58, the following procedure relating to design review shall take place at the same time:

(2) The design review board shall review the application and make a recommendation to the commission for approval or disapproval. If the board recommends disapproval, the reasons shall be stated. The board shall consider the following standards:

(iv) The design avoids undue monotony in structural design features.

The board may condition recommendation for approval upon an applicant obtaining of a suitable variance pursuant to article VIII ~~from the board of adjustment.~~

Sec. 22-102.1. - Nonconforming structure as special exception.

(a) The board of adjustment and city commission ~~is~~ are authorized to permit the enlargement or alteration of a nonconforming structure, except any sign, as a special exception upon application, notice and hearing as provided in sections 22-141(a), 22-142(11), and 22-143, and upon finding and determining the following:

~~(b) The board of adjustment shall confer with the city planning board on all applications for such special exception.~~

(be) In granting a special exception hereunder, the board of adjustment and city commission may require certain conditions and safeguards for the public health, safety and welfare, concerning the following:

(ec) In granting any special exception, the board of adjustment and city commission may prescribe a reasonable time limit within which the enlargement or alteration for which the special exception is requested shall be begun and/or completed.

(ed) The procedure by which an application shall be made to the board of adjustment under this section shall be as provided in section 22-110 and section 22-112.

(fe) The approval of any enlargement or alteration of a nonconforming structure as a special exception under this section shall require the conforming vote of ~~four (4) members of the board of adjustments~~ a majority of the board of adjustment or city commission.

Sec. 22-105.1. - Duplex as special exception.

If a lot of record exists which could have been used for multifamily purposes involving a triplex structure or more before January 1, 1985, and the lot is no longer permissible for any use other than as a single-family dwelling then, in that event, the board of adjustment and city commission ~~are~~ is authorized to allow use of the lot for a duplex upon application, notice and hearing as provided in sections 22-141(a), 22-142(11), and 22-143, and upon finding and determining the following:

Sec. 22-107. - Authorization to grant or deny variances.

The board of adjustment and city commission may authorize a variance from the regulations governing the height, area and size of structures and size of yards and open spaces only when consistent with the purpose of this article, this section and the criteria in sections 22-108 and 22-109. In granting a variance, the board of adjustment and city commission may prescribe appropriate conditions and safeguards which it finds necessary to protect the best interests of the surrounding property or vicinity and otherwise achieve the purpose of this chapter. Guarantees and evidence may be required that such conditions will be and are being complied with. ~~No variance shall be granted without~~ The concurring vote of ~~(4) members~~ a majority of the board of adjustment or city commission ~~or~~ is required:

- (1) To grant a variance;
- ~~(42)~~ (2) To allow the establishment or expansion of a use of property for a purpose not authorized within the zone in which the property is located;
- ~~(32)~~ (3) Due to nonconformities in any district or to a permitted use of lands, structures or buildings in an adjoining zoning district;
- ~~(43)~~ (4) When a previous request for a variance has been denied by the board of adjustment or city commission and there has been no material change of circumstances since the previous application; or
- (5) To reverse any decision of the planning director.

Sec. 22-109. - Variances for FH zone provisions.

The board of adjustment and city commission may grant variance requests for FH zone provisions subject to the following provisions:

- (2) In passing upon variance applications, the board of adjustment and city commission shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(3) Upon consideration of the factors listed above and the purposes of this chapter, the board of adjustment and city commission may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter.

(4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(5) Conditions for variances:

d. The planning director of ~~development~~ shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

Sec. 22-110. - Application for a variance.

~~Appeals to the board of adjustment~~ An application for a variance may be made by the property owner of the area involved or their designated representative by filing an application with the planning department of ~~development and the board of adjustment~~. The application will specify the nature of the variance and the reasons for the variance. It will be in the form prescribed by the rules of ~~the board of adjustment~~ this chapter. The application will also be accompanied by plans, containing information specified in section 22-141. The planning director, board of adjustment, and city commission may request other drawings or information necessary for an understanding of the request.

Sec. 22-111. - Stay of proceedings.

An appeal to the city commission for a variance stays all proceedings in furtherance of the action appealed from, unless the planning director of ~~the department of development~~ certifies to the board of adjustment after the notice of appeal shall have been filed ~~with him~~, that by reason of facts stated in the certificate, a stay would, in the director's opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment ~~or by a court of record on application~~, on notice to the planning director, ~~of the department of planning and development~~ and on due cause shown.

Sec. 22-112. - Variance procedure.

(a) The ~~department of planning department and development~~ will prepare a staff report which presents any inconsistencies found between the requested variance and zoning ordinance requirements and will submit it to the board of adjustment.

(b) Before the board of adjustment may act on an application for a variance or a special exception or an appeal from the decision of ~~an administrative officer~~ the planning director,

it will hold a public hearing within thirty (30) days of the filing of the application and in accordance with the provisions of section 22-143. The board of adjustment will review the request and staff report at the public hearing.

(c) Within thirty-five (35) days of the public hearing, except the board of adjustment with good cause demonstrated may allow an extension of time, the board of adjustment will determine whether the evidence supports a finding that the requirements of the zoning ordinance and other city laws have been met. It will approve, approve with conditions, or ~~deny~~ disapprove the application accordingly.

(d) The board of adjustment's decision will be sent by mail to the applicant within five (5) working days of the action.

Sec. 22-114. - Time limit for variances.

Authorization of a variance shall be void after one year or such lesser time as the authorization may specify unless substantial construction has taken place. However, when requested, the ~~board of adjustment~~ planning director may extend authorization for an additional period not to exceed one year.

Sec. 22-115. - Limitations of refiling of application.

Applications for which a substantially similar application has been ~~denied~~ disapproved will be heard by the board of adjustment only after a period of six (6) months has elapsed from the date of the ~~earlier~~ final decision.

Sec. 22-117. - Notice requirement for certain structures in FH zones.

When a variance is granted allowing a structure to be built or placed with the lowest floor elevation at or below the base flood elevation, the planning director ~~of the department of planning and development~~ shall give written notice to the owner of the structure that this is allowed and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation.

Sec. 22-118. - Appeals.

Within twenty (20) days of the written decision of the board, an aggrieved party may appeal the decision by filing a written notice of appeal and an appeal fee of twenty-five dollars (\$25.00) with the city clerk. The notice of appeal shall state the decision which is being appealed, the grounds for the appeal, and a brief summary of the relief which is sought. Within sixty (60) days of the filing of the appeal or the first regular city commission meeting which is scheduled, whichever is later in time, the city commission shall conduct

a public hearing at which time they may affirm, modify, or reverse the board's decision. The decision of the city commission shall constitute final administrative review, and no petition for rehearing or reconsideration shall be considered by the city. Nothing contained herein shall preclude the city commission from seeking additional information prior to rendering a final decision. The decision of the city commission shall be in writing and a copy of the decision shall be forwarded to the board and the appealing party.

Secs. 22-1189—22-124. - Reserved.

Sec. 22-140. - Appeals from rulings of ~~administrative officer~~ the planning director.

(a) General. An appeal to the board of adjustment may be made by any person aggrieved or by any officer ~~or bureau~~ of the city affected by any decision of the ~~building inspector or any other administrative officer of the city~~ planning director regarding a provision of this chapter. Such appeal shall be made within a reasonable time, as provided by the rules of the board this section, by filing ~~with the officer from whom the appeal is made and with the board of adjustment~~ a notice of appeal specifying the grounds thereof through the planning department. The ~~officer from whom the appeal is taken~~ planning department shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was made.

(b) Authorization to grant or ~~deny~~ disapprove appeals. The board of adjustment, in conformity with the provision of this section, may reverse or affirm, wholly or partly, or may modify the decision appealed from and may make such decision as ought to be made, and to that end shall have all the power, concerning this chapter, of the ~~officer from whom the appeal is made~~ planning director. The concurring vote of ~~four (4) members a majority~~ of the board shall be necessary to reverse any decision of ~~any such administrative official~~ the planning director.

(c) Stay of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the ~~officer from whom the appeal is made~~ planning director certifies to the board of adjustment after the notice of appeal shall have been filed ~~with him~~, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment ~~or by a court of record on application~~, on notice to the ~~officer from whom the appeal is made~~ planning director and on due cause shown.

(d) Appeals procedure.

(1) Before the board of adjustment may act on an appeal from a ruling of an ~~administrative officer~~ the planning director pursuant to this section, it will hold a public hearing in accordance with the provisions of section 22-143.

(2) Within thirty-five (35) days of the public hearing, except the board of adjustment with good cause demonstrated may allow an extension of time, the board of adjustment will make its decision on the appeal.

(3) The board of adjustment decision will be sent by mail to the applicant within five (5) working days of its decision.

Sec. 22-147. - Board of adjustment.

(a) Membership.

(1) Regular. The board of adjustment shall consist of five (5) members, with one (1) appointed by each commissioner and one (1) appointed by the mayor. ~~and be removable~~ Any member may be removed for with or without cause by the city commission ~~upon written charges and after a public hearing held in accordance with section 22-143.~~ The terms of office of the members of the board shall be ~~three (3) years concurrent with the mayor's and appointing city commissioner's terms.~~ except that the five (5) members who shall be sitting upon the board of adjustment as of the effective date hereof shall continue as members of the board serving out the terms for which they were originally appointed. Thereafter, as each term expires, the appointment shall be for three (3) years.

(2) Alternate. ~~The city commission shall also appoint two (2) alternate members. The terms of office of alternate members shall be three (3) years, except that the first two (2) shall serve respectively for terms of: One for two (2) years and one for three (3) years. Thereafter, as any term expires, the appointment shall be for three (3) years. An alternate member shall sit on the board when a regular member is not in attendance, whether such an absence is excused or not. If an alternate shall on two (2) successive occasions be unable to sit for a meeting as a member of the board when asked to do so, he shall be deemed to have resigned his position as an alternate member of the board.~~

(3) Other boards. ~~At least one, but not more than two (2) members of the board of adjustment may also be members of the city planning board.~~

(4) Absences. ~~Absence from three (3) consecutive regular meetings shall operate to vacate the seat of a regular member unless such absence is excused by the board by resolution.~~

Sec. 22-182. - Variances and administrative appeals.

A variance from any of these substantive requirements of this section or an appeal of any administrative determination made by the ~~department~~ planning director may be made in accordance with the procedures set forth for such relief under the current zoning code of

the city. ~~The board of adjustments of the city shall be the board to which all variance requests or appeals under this article are made.~~ Any appeal should be initiated by a written notice filed with the planning department ~~city clerk~~ within thirty (30) days of the date of the administrative determination which is the subject of such appeal.

Sec. 22-218. - Concurrency assessment.

(c) Certificate of concurrency. A valid, unexpired certificate of concurrency shall be obtained prior to site plan or temporary plat approval.

(1) Review prior to application for development approval. At the applicant's request, the city shall review and approve, approve with conditions or ~~deny~~ disapprove an application for a certificate of concurrency prior to consideration of a development approval application.

a. Application. An application for a certificate of concurrency determination shall be submitted to the planning director ~~of planning~~ at the time of filing an application for site plan or temporary plat approval. An application processing fee established by the city commission shall be part of the application. Applications for projects containing over ten (10) dwelling units or five hundred (500) gross square feet of nonresidential floor area shall also be required to bear the cost of preparing any necessary supplemental demand analyses at the time of application.

b. Determination of completeness. After receipt of an application for a certificate of concurrency, the planning director ~~of planning~~ shall determine whether it is complete within ten (10) business days. If it is determined to be incomplete, written notice shall be served on the applicant specifying the deficiencies. No further action on the application shall be taken by the city unless the deficiencies are remedied. Within twenty (20) business days after the application is determined complete, the planning director ~~of planning~~ shall review and grant, grant with conditions, or ~~deny~~ disapprove each public facility component in the application pursuant to the standards in section 1.5-6(f).

c. Appeals. Within thirty (30) business days after issuance of the determination of the planning director ~~of planning~~ on the application for a certificate of concurrency, an applicant may appeal to the board of adjustment. ~~An application fee for processing appeals shall be established by the city commission.~~ The ~~committee~~ city shall hold a hearing on the appeal to consider the determination of the planning director ~~of planning~~ and public testimony. The ~~city commission~~ board shall adopt, reject or modify the ~~director of planning's~~ planning director's determination on the application for a certificate of concurrency determination. Neither ~~the~~

board of adjustment nor the city commission shall ~~not~~ modify or reject the planning director's determination unless it finds that such determination is not supported by substantial competent evidence and is contrary to the criteria established in article XIV of chapter 22 of this code of ordinances and the intent of the comprehensive plan. ~~Committee~~ Decisions shall include findings of fact for each criteria.

ARTICLE XV. - SIDEWALK CAFES AND SUPPLEMENTARY SIDEWALK REGULATIONS

Sec. 22-310. - Appeals and variances.

(a) The decision of the planning department to grant, ~~deny~~ disapprove, revoke or suspend a permit may be appealed to the board of adjustment and appeals by following the provisions in section 22-140.

(b) Variances to the requirements of this article, unless otherwise prohibited, may be granted by the board of adjustment and city commission if the request meets the criteria for obtaining a variance ~~from the board~~.