



City of Bay Minette

Variations – Zoning Ordinance Regulations

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A variance allows property owners to request an exception to certain zoning regulations when unique conditions create a hardship in complying with standard minimum requirements. The following information is an excerpt from the Zoning Ordinance that provides information on the variance process, eligibility criteria, and how to submit an application.

14.04.02.03 Variations – Conditions Governing Applications; Procedures. To authorize upon request in specific cases such Variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A Variance from the terms of this Ordinance shall not be granted by the Board of Adjustment unless and until:

- a. A written application for a Variance is submitted demonstrating:
 1. That 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 other buildings in the same district.
 2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 3. That the special conditions and circumstances do not result from the actions of the applicant.
 4. That granting the Variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.
 5. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no prohibited/permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a Variance.
- b. The application shall be submitted no less than thirty (30) days prior to the Planning Commission meeting at which it is to be reviewed. The application shall be considered by the Planning Commission, which shall make a recommendation to the Board of Adjustment with regard to approval, approval with conditions or disapproval. A public hearing shall not be required before the Planning Commission. The Planning Commission's recommendation is not binding on the Board of Adjustment, it is merely advisory.
- c. Upon receipt of a recommendation from the Planning Commission notice of public hearing shall be given as in *Section 14.04.02.02(b)* above.
- d. The public hearing shall be held as scheduled. Any party may appear in person, or by agent or by attorney.
- e. The Board of Adjustment shall make findings that the requirements of *Section 14.04.02.03(a)* have been met by the applicant prior to granting a Variance.
- f. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the Variance, and that the Variance is the minimum Variance that will make possible the reasonable use of the land, building or structure.
- g. The Board of Adjustment shall further make a finding that the granting of the Variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 1. In granting any Variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the Variance is granted, shall be deemed a violation of this Ordinance and punishable under *Section 15.05* of this Ordinance.
 2. Under no circumstances shall the Board of Adjustment grant a Variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
 3. Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official. In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in

conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of Administrative Official from whom the appeal is taken.

4. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this Ordinance.

h. Limitation on Resubmission. An application for the same parcel of land shall not be submitted within 365 days of the final decision of the Board of Adjustment. Any application may be withdrawn without prejudice prior to the opening of the hearing by the Board of Adjustment. All notices to withdraw shall be submitted in writing.

14.05 APPEALS FROM ACTION OF THE BOARD OF ADJUSTMENT

Any party aggrieved by any final judgment or decision of the Board of Adjustment may, within fifteen (15) days thereafter, appeal therefrom to the circuit court or court of like jurisdiction, by filing with the Board a written notice of appeal specifying the judgment or decision from which appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the cause to be certified to the court to which the appeal is taken and the cause in such court be tried de novo.