

Administrative Appeals

10-2-2: HEARING OFFICER:

D. Variances:

1. Any person or entity desiring a waiver or modification of the requirements of the land use ordinance as applied to a parcel of property that he owns, leases or in which he holds some other beneficial interest, may apply to the hearing officer for a variance from the terms of the land use ordinance.
2. The hearing officer may grant a variance only if:
 - a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - e. The spirit of the land use ordinance is observed and substantial justice done.
3. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under this subsection, the hearing officer may not find an unreasonable hardship unless:
 - a. The alleged hardship is located on or associated with property for which the variance is sought; and
 - b. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood;
 - c. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection D2 of this section or this subsection D3, the hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.
 - d. In determining whether or not there are special circumstances attached to the property under subsection D2 of this section or this subsection D3, the hearing officer may find that special circumstances exist only if the special circumstances:
 - (1) Relate to the hardship complained of; and
 - (2) Deprive the property of privileges granted to other properties in the same zone.

4. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
5. Variances run with the land.
6. The hearing officer and any other body may not grant a use variance.
7. In granting a variance, the hearing officer may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of the variance; or
 - b. Serve the purpose of the standard or requirement that is waived or modified.

E. Appeal Of Hearing Officer Decision To District Court: Any person adversely affected by any decision of a hearing officer may petition the district court for a review of the decision within thirty (30) days of said decision. (Ord. 2012-07, 4-30-2012)