

Section 5-109 Variances

SECTION 5-109. VARIANCES.

- A. **Authority and Purpose.** The Hearing Officer(s) and the Plan Commission are hereby authorized to grant **and/or recommend to the Board of Trustees** such variances from the literal terms of these regulations where there are practical difficulties or unnecessary hardships that may result from strict compliance with these regulations so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. The Hearing Officer(s) shall hear those applications affecting **one (1) single family residential dwelling and those applications affecting multi-family dwellings of fewer than six (6) units.** ~~developments of six (6) units or less.~~ All other applications for a variance shall be heard by the Plan Commission. (Ord. 3281 - 8/16/99)
- B. **Application.** An application for a variance authorized under the provisions of this Section shall be submitted to the Development Services Department and reviewed in accordance with the provisions of Sections 5-101.
- ~~C B.~~ **Timing.** Variances shall only be granted at the final approval stage. If a final plan is not required, then variances shall be granted prior to the issuance of a building permit. (Ord. 3070-10/20/97)
- ~~D C.~~ **Standards Applicable to all Variances.** The findings of the Hearing Officer(s) or Plan Commission and the Board shall be based on data submitted pertaining to each standard in this section as it relates to the development. A variance shall be granted only if the applicant demonstrates:
1. That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located;
 2. That the plight of the owner is due to unique circumstances;
 3. That the variation, if granted, will not alter the essential character of the locality;
 4. That because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations were carried out;
 5. That the conditions upon which the petition for a variation ~~is~~ **are** based are unique to the property for which the variance is sought and are not applicable, generally, to other property;
 6. That the alleged difficulty or hardship is caused by these regulations and has not resulted from any act of the applicant or any other person presently having an interest in the property subsequent to the effective date hereof, whether or not in violation of any portion thereof;
 7. That the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located or otherwise be inconsistent with the Comprehensive Plan, any

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adopted overlay plan or these regulations;

8. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood;
9. That the variance granted is the minimum adjustment necessary for the reasonable use of the land; and
10. That aforesaid circumstances or conditions are such that the strict application of the provisions of this Section would deprive the applicant of any reasonable use of his or her land. Mere loss in value shall not justify a variance; there must be deprivation of all beneficial use of land.

~~D. **Conditions.** Issuance of a variance may be made subject to such conditions as are necessary to carry out the purposes of these regulations and to prevent or minimize adverse effects upon other property in the neighborhood, including, but not limited to, limitations on size and location, hours of operation, requirements for landscaping, lighting, and ingress and egress.~~

~~E. **Application.** An application for a variance authorized under the provisions of this Section shall be submitted to the Building Department or the Director of Community Development Services Department and reviewed in accordance with the provisions of Sections 5-101 (B-D).~~

E F. Limitations on Variances Granted by the Hearing Officer(s) or the Plan Commission. Variances shall ~~may~~ only be granted by the Hearing Officer(s) or the Plan Commission in the following below instances: ~~The Village Board of Trustees may also grant these and other variances to these regulations.~~

1. To permit any setback less than the setback required by the applicable regulations, but by not more than twenty-five (25%) percent.
2. To permit an increase in the height of detached garages but by not more than twenty-five (25%) percent.
- ~~3-2.~~ 2. To permit the use of a lot or lots for a use otherwise prohibited solely because of insufficient area or width of the lot or lots but in no event shall the respective area and width of the lot or lots be less than ninety percent (90%) of the required area and width. The percentage set forth in this subparagraph is not to be reduced by any other percentage for minimum lot width and area set forth in these regulations.
- ~~4-3.~~ 3. To reduce the applicable off-street parking or loading facilities required by not more than one (1) parking space or loading space, or twenty percent (20%) of the applicable regulations, whichever number is greater.
4. To increase by not more than twenty-five percent (25%) the maximum distance that required parking spaces are permitted to be located from the use served.
5. To increase by not more than ten percent (10%) the maximum gross floor area of

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any use so limited by the applicable regulations.

6. To exceed any of the authorized variations allowed under this section, when a lot of record or a zoning lot, vacant or legally used on the effective date of these regulations, is by reason of the exercise of the right of eminent domain by any authorized governmental body or by reason of a conveyance under threat of an eminent domain proceeding reduced in size so that the remainder of said lot of record or zoning lot or structure on said lot does not conform with one (1) or more of the regulations of the district in which said lot of record or zoning lot or structure is located.

- F G. Review.** See Section 5-101 for public hearing procedures. Within fifteen (15) days after receipt of a complete application, the Director of Community Development or the Building Department shall complete the review of the application and at least five (5) days prior to the next hearing of the Hearing Officer or Plan Commission, send a written recommendation to the Hearing Officer or Plan Commission, with a copy to the applicant, setting forth whether the variance should be issued or denied and the grounds for such recommendation.
- G. Conditions.** Issuance of a variance may be made subject to such conditions as are necessary to carry out the purposes of these regulations and to prevent or minimize adverse effects upon other property in the neighborhood, including, but not limited to, limitations on size and location, hours of operation, requirements for landscaping, lighting, and ingress and egress.
- H. Action by the Hearing Officer or Plan Commission.** See Section 5-101.C.1 and 5-101.C.4 for the respective procedures and actions of the Plan Commission and the Hearing Officer(s) relating to public hearings. The Hearing Officer or Plan Commission shall review the application, and the recommendation of the Director of Community Development or the Director of the Building Department, conduct a public hearing on the application in accordance with the requirements of Section 5-101(E) and shall, if the variance is within one of those variances authorized in Subsection F, grant the variance, requested subject to specified conditions, or deny the variance. If the variance is not within one of those variances authorized in Subsection F, the Hearing Officer or Plan Commission may recommend to the Board of Trustees whether the variance requested complies with the standards of Subsection C, above. For those applications affecting single family residential developments of six (6) units or less which also require approval of subdivision, special use or rezoning by the Village, application for variance shall be heard by the Plan Commission.
- I. Action by the Board of Trustees.** See Section 5-101 for the procedures and actions of the Village Board of Trustees. The Board shall review the recommendation of the Hearing Officer or Plan Commission for these variances not specifically authorized in Subsection F and shall either grant the variance, grant the variance subject to specified conditions, or deny the variance.
- J. Special Use Procedures.** If an application cannot comply with these variance regulations and the use would be otherwise permitted in the zoning district in which the property is located, the applicant may elect to follow the procedures for a ~~major~~ special use permit set forth in Section 5-105 and thereby obtain some modification of these regulations **if the project is a planned development with a special use.**

~~Diagram Procedure for Variances
FOR VIEWING IN THE CLERK'S OFFICE~~