

Sec. 66-253. - Variances.

(a) *Generally.*

- (1) *Authority of town commission.* Where there are practical difficulties or unnecessary hardships incurred in the literal enforcement of the provisions of this land development code, the town commission shall have the power in specific and appropriate cases, and after due notice and a public hearing, to grant upon petition such variance from or exception to the terms of this Code as may not be contrary to the public interest and in order that substantial justice may be done; except that the town commission shall not grant variances from land use classification provisions in chapter 74, article II, and consistency and concurrency provisions of chapter 70.
- (2) *Notice of public hearing.* At least 20 days' notice of the time and place of such public hearing shall be given in a newspaper of general circulation within the town, by posting such notice at the town hall, and by verified notification to owners of adjacent and opposite lots extending laterally a distance of 500 feet on each side of the property for which the variance petition is being made. For multiple-owned structures such as condominiums, cooperative ownerships, etc., the mailing shall be to the property owners' association only.
- (3) *Variances to be considered as part of development review.* A person desiring to undertake a development activity not in conformance with this land development code may apply for a variance in conjunction with the application for development review as specified in section 66-164. A development activity that might otherwise be approved by the town manager must be approved by the town commission if a variance is sought. The variance shall be granted or denied in conjunction with the application for development review.

(b) *Criteria for granting; conditional approval; expiration of approval.*

(1) *Initial determination.*

- a. Before granting any variance, the town commission shall determine that:
 1. Special conditions and circumstances exist which are peculiar to the land, structure or buildings involved.
 2. The special conditions and circumstances do not result from actions of the applicant.
 3. Literal interpretation of the provisions of this Code would work unnecessary and undue hardship on the applicant.
 4. The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, structure or building.
 5. A grant of variance will be in harmony with the general intent and purpose of this Code, and that such variance will not be injurious to the zoning district involved or otherwise detrimental to the public interest.
 6. A grant of variance will not result in any land use not specifically provided for in the schedule of district regulations (section 74-82 of this Code) for the zoning district in which the property is located.
- b. In granting a variance, the town commission may prescribe any terms, conditions and safeguards which it may in its judgment deem fitting and proper to preserve the safety, health and welfare of the community.
- c. Neither nonconforming use of neighboring properties, structures or buildings, nor permitted use of properties, structures or buildings in other zoning districts, shall be considered a substantive basis for granting a variance, nor will financial hardship or gain be a justification for granting a variance.

- (2) *Imposition of conditions.* In granting a development approval involving a variance, the town commission may impose such conditions and restrictions upon the premises benefited by a

variance as may be necessary to allow a positive finding to be made on any of the factors listed in subsection (1) of this subsection, or to minimize the injurious effect of the variance.

- (3) *Expiration of approval.* If the granting of any variance pursuant to this section is for the purpose of allowing additional, new improvements to be constructed, then such variance, if granted, shall automatically expire 12 months after such variance is approved by the town commission, unless a building permit is procured from the town with respect to the improvements contemplated by the application for variance within the 12-month period, and unless the construction of the improvements is promptly commenced pursuant to the building permit and diligently pursued to completion thereafter. Upon application pursuant to section 66-231, the commission may extend the expiration date for up to one year.

(c) *Variances to requirements of flood damage prevention regulations.*

- (1) *Additional required findings.* In addition to the findings required in subsection (b) of this section, the town commission shall find that the requested variance will not result in an increase in the elevation of the base flood, additional threats to public safety, additional public expense, the creation of nuisances, fraud or victimization of the public, or conflicts with other local ordinances.
- (2) *Considerations in granting.* Before granting a variance, the town commission shall consider:
 - a. The danger that materials may be swept from the site onto other lands.
 - b. The danger to life and property from flooding or erosion.
 - c. The potential of the proposed facility and its contents to cause flood damage, and the effect of that damage on the owner and the public.
 - d. The importance of the services provided by the proposed facility to the community, and whether it is a functionally dependent facility.
 - e. The availability of alternative locations, not subject to flooding or erosion, for the proposed use.
 - f. The compatibility of the proposed use with existing and anticipated neighboring development.
 - g. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - h. Safe vehicular access to the property in times of flood.
 - i. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters, and effects of wave action, if applicable, at the site.
 - j. The costs of providing governmental services during and after floods, including maintenance and repair of public utilities and facilities.
- (3) *Special restriction for regulatory floodways.* Variances that would increase flood levels during the base flood shall not be issued within any regulatory floodway.
- (4) *Flowage easements.* No variance that would increase flood damage on other property shall be granted unless flowage easements have been obtained from the owners of all affected properties. In no event shall a variance be granted that would increase the elevation of the base flood more than one foot.
- (5) *Notification statements.* All variances to the flood damage prevention regulations shall:
 - a. Specify the difference between the flood protection elevation and the elevation to which the structure is to be built.
 - b. State that the variance will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage.
 - c. State that construction below the flood protection level increases risks to life and property.

- (6) *Record of variances.* The town manager shall maintain a record of all variances, including the justification for their issuance and a copy of the notice of the variance. The town manager shall report all variances in the annual report to the federal insurance administrator.
- (7) *Special variance for historic properties.* Notwithstanding the requirements of subsections (1) through (6) of this subsection, special variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on, or classified as contributing to a district listed on, the National Register of Historic Places, the local register of historic places or the state inventory of historic places. The special variance shall be the minimum necessary to protect the historic character and design of the structure. No special variance shall be granted if the proposed construction, rehabilitation or restoration will cause the structure to lose its historical designation.
- (d) *Status of denial of variance request.* When the town commission has denied an application for variance or hardship relief, no applicant shall submit an application for a similar variance or hardship relief for any part or all of the same property for a period of 12 months from the date of final denial.

(Ord. No. 300, § III(12.02.03), 11-7-90; Ord. No. 318, § 41, 6-2-92; Ord. No. 399, § 1, 11-20-01; Ord. No. 430, § 2, 12-20-05)