

1154.04**POWERS AND DUTIES.**

The Board of Zoning Appeals has the following authority, subject to confirmation by Council, which may affirm, reverse or modify:

(a) To consider appeals from rulings of the Building Commissioner or other officials and agencies in the administration or enforcement of this Zoning Code where it is claimed there is an error in any order, requirement, decision, interpretation or determination.

(b) To grant variances to the building and zoning requirements of this Zoning Code which will not be contrary to the public interest, where, because of special conditions, a literal enforcement of this Zoning Code will result in practical difficulty with regard to an area variance, or unnecessary hardship in all other cases, as distinguished from a mere inconvenience, and where the granting of such variance will permit use of land in accord with the intent and purposes of this Zoning Code and will not harm the property or improvements in the neighborhood in which the property is located.

The Board shall review each request for a variance to determine if such request complies with the purpose and intent of this Zoning Code and to determine if the applicant can demonstrate that the literal enforcement of this Zoning Code will result in practical difficulty with regard to area variances, or unnecessary hardship with regard to all other variances.

(1) The following factors shall be considered and weighed by the Board in determining practical difficulty:

A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot or adjacency to nonconforming and inharmonious uses, structures or conditions.

B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer and trash pick-up;

F. Whether the property owner purchased the property with knowledge of the zoning restrictions;

G. Whether the special conditions or circumstances exist as a result of action of or by the owner;

H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

I. Whether the spirit and intent behind the zoning requirement would be

observed and substantial justice done by granting a variance; and

J. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this Zoning Code to other similarly situated lands, structures or buildings in the same district.

(2) No variance shall be granted to allow a use not permissible under the terms of this Zoning Code in the zoning district in which the property is located, unless the Board finds that the applicant for the variance has demonstrated that the applicant will suffer unnecessary hardship if strict compliance with the terms of this Zoning Code is required. Such hardship must be demonstrated by clear and convincing evidence as to all of the following criteria:

A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district;

B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

C. The hardship condition is not created by action of the applicant;

D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

E. The granting of the variance will not adversely affect the public health, safety or general welfare;

F. The variance will be consistent with the general spirit and intent of this Zoning Code; and

G. The variance sought is the minimum which will afford relief to the applicant.

(Ord. 96-61. Passed 4-21-97.)