

Sec. 102-186. - Variances granted by the planning director.

- (a) **Purpose.** The purpose of this section is to establish authority, procedures, and standards for the granting of variances and waivers from certain requirements of this chapter.
- (b) **Authority and scope of authority.** The planning director is authorized to grant the following variances and waivers according to the standards of subsections (f) and (g) of this section:
 - (1) Reduction in the front, and rear yard, nonshoreline setback requirements in chapter 130, article VI by no more than ten feet and side yard setback by no more than 20 percent;
 - (2) Reduction in the off-street parking requirements in chapter 114, article III by no more than 20 percent;
 - (3) Reduction in the bufferyard width requirements for class C, D, E, and F district boundaries, major streets, and scenic corridors in chapter 114, article V by no more than ten percent; and
 - (4) Reduction by no more than ten percent in the total area of landscaping required for off-street parking and loading in chapter 114, article III.
- (c) **Application.** An application for a variance or waiver under this section shall be submitted to the planning director on a form approved by the planning director.
- (d) **Procedures.** The planning director shall normally complete his review of the entire application and render a proposed decision within 15 working days of receipt of the application.
- (e) **Decision.** The planning director's decision shall be in writing. Except for the special accessibility setback variance as provided for in subsection (h) of this section, a variance shall only be granted if all of the standards in subsection (f) of this section are met.
- (f) **Standards for variances.** The planning director shall grant a variance under this section if the applicant demonstrates that all of the following standards are met:
 - (1) The applicant shall demonstrate a showing of good and sufficient cause;
 - (2) Failure to grant the variance would result in exceptional hardship to the applicant;
 - (3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
 - (4) Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
 - (5) Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
 - (6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
 - (7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and
 - (8) The variance is the minimum necessary to provide relief to the applicant.
- (g) **Standards for waivers.**

The director of planning may approve a waiver that modifies the minimum front yard requirements set out in section 130-186 provided the applicant demonstrates that:

- (1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 101-1, on the street within the land use district in which the subject property is located is less than the land use district standard, as established in section 130-186
 - (2) The waiver will not result in a setback that is less than the existing front yard setback to the further most projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property;
 - (3) The waiver is for an amount not greater than 20 percent of the land use district standard as established in section 130-186; and
 - (4) In the event that a contiguous lot on either side of the subject property is vacant, the land use district standard shall apply.
- (h) **Special accessibility setback variance.** Notwithstanding the standards in subsections (f) (4), (5), (6) and (7) of this section, a variance from the yard setback requirements may be granted for an elevator or wheelchair lift or ramp required to allow access to the elevated dwelling unit of a disabled applicant or disabled member of his household.
- (i) **Public notification of proposed approval.** After determining that an application for a variance or a waiver complies with the requirements of this section, the planning director shall provide written notice of proposed approval and require posting as follows:
- (1) The planning director shall provide written notice by regular mail to owners of real property located within 300 feet of the property that is the subject of the proposed variance or waiver.
 - (2) The applicant shall post the property of the proposed variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property. The property shall remain posted for no less than 30 consecutive calendar days beginning within five working days of the date that the application is deemed to be in compliance by the planning director.
 - (3) The notice and posting shall provide a brief description of the proposed variance or waiver and indicate where the public may examine the application. The cost of providing notice and posting shall be borne by the applicant.
- (j) **Decision by the planning director.** After 30 calendar days of proper posting, review of all public responses to the variance or waiver application, and upon a finding that the proposed variance or waiver and application have or have not complied with the requirements and standards of this section, the planning director shall issue a written variance decision.
- (k) **Public hearing by the planning commission.** If requested in writing by the applicant, or an adversely affected owner or resident of real property located in the county during the required 30 calendar days of posting, a public hearing shall be scheduled on the application for a variance or waiver after the 30th day of posting, but before the 60th day after posting. All costs of the public hearing shall be the responsibility of the applicant for the variance or waiver. The public hearing shall be conducted in accordance with section 110-5 and provisions of section 102-187

(Code 1979, § 9.5-523; Ord. No. 40-1988, § 190; Ord. No. 19-1993, § 16; Ord. No. 034-2003, § 1; Ord. No. 040-2007, § 3)

Sec. 102-187. - Variances granted by planning commission.

- (a) **Purpose.** The purpose of this section is to authorize procedures and standards for the granting of variances from certain provisions of this chapter.
- (b) **Authority and scope of authority.** The planning commission is authorized to grant the following variances in accordance with the standards in section 102-186(f):
- (1) Front, back, side, and rear yard setback requirements in chapter 130, article VI;
 - (2) District boundary, major street and scenic corridor bufferyard requirements in chapter 114, article V;
 - (3) Off-street parking and loading space requirements in chapter 114, article III;
 - (4) Landscaping requirements in chapter 114, article IV; and
 - (5) Access standards in chapter 114, article VII.
- (c) **Application and procedures.** An application for a variance shall be submitted to the planning director. The planning director shall review the entire application and all public responses thereto and prepare a staff report with recommendations for the planning commission. The variance application shall be heard at a regularly scheduled meeting of the planning commission. Notice, posting and hearing requirements shall be in accordance with section 110-5
- (d) **Decision.** The planning commission's decision shall be in writing in accordance with section 101-1. Except for the special accessibility setback variance provided for in section 102-186(g), a variance shall only be granted if the standards in section 102-186(f) are met.

(Code 1979, § 9.5-524; Ord. No. 034-2003, § 3)