



GUIDE TO VARIANCES

DEPARTMENT OF PLANNING AND ZONING

WHAT IS A VARIANCE?

A variance is a legally permitted exception to a zoning provision. Variances are granted to alleviate unnecessary hardships where the strict enforcement of the zoning regulations might preclude the development or reasonable use of a property. Variances may also provide relief from a hardship associated with the physical characteristics of a property where such conditions do not apply to other properties in the immediate area.

ZONING ORDINANCE

The 1994 State of South Carolina's Code of Laws Title Six, Chapter 29 establishes the state laws for Zoning Board of Appeals (ZBA), the governing body of local municipalities' variance hearings. **T6C29:** www.scstatehouse.net/code/t06c029.htm

The Department of Planning and Zoning enforces the City's Zoning Ordinance adopted November 14, 1978 as amended. Section 151.170 of City Code sets forth the creation of, duties, and powers of the Zoning Board of Appeals (ZBA). Section 151.171 (B) of City Code states that the requirements of this Ordinance when strict application of the provisions of the Ordinance will result in unnecessary hardship..."

All of the following factors shall be met in order for a variance to be granted:

- **151.171 (B) (1)** There are extraordinary and exceptional condition pertaining to the particular piece of property;
- **151.171 (B) (2)** These conditions do not generally apply to other property in the vicinity;
- **151.171 (B) (3)** Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
- **151.171 (B) (4)** The authorization of the variance shall not be of substantial detriment to adjacent property or to the public good, and the character of the district shall not be harmed by granting of the variance;
- **151.171 (B) (5)** The ZBA may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;
- **151.171 (B) (6)** In granting a variance, the ZBA may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, of use as the ZBA may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare, and;
- **151.171 (B) (7)** The ZBA shall not grant use variances. A use variance involves the establishment of a use not otherwise permitted in a zoning district, or extends physically a non-conforming land use, or changes the zoning district boundaries shown on the official zoning map.

The Department of Planning and Zoning for the City of Goose Creek oversees Land Use Applications for site plans, rezonings, conditional use permits, residential subdivision developments, and variances. Variance requests are subject to review by the Zoning Board of Appeals (ZBA). A Land Use Application is available at the Department of Planning and Zoning and at the City's website, www.cityofgoosecreek.com. Submit the completed application, a letter of intent, all supporting supplemental materials and a \$60.00 fee to the Department of Planning and Zoning. The Department will post a sign for one week on the property informing the community of the variance request. In addition, a public notice will be printed in the newspaper two weeks prior to the ZBA hearing.

RELEVANT VARIANCE LAW

In the landmark Supreme Court Case *Dolan v. City of Tigard* (93-518), 512 U.S. 687 (1994) the following criteria were established to determine variance requests:

"CDC § 18.134.050 contains the following criteria whereby the decision making authority can approve, approve with modifications, or deny a variance request:

- '(1) The proposed variance will not be materially detrimental to the purposes of this title, be in conflict with the policies of the comprehensive plan, to any other applicable policies of the Community Development Code, to any other applicable policies and standards, and to other properties in the same zoning district or vicinity;
- '(2) There are special circumstances that exist which are peculiar to the lot size or shape, topography or other circumstances over which the applicant has no control, and which are not applicable to other properties in the same zoning district;
- '(3) The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent possible, while permitting some economic use of the land;
- '(4) Existing physical and natural systems, (such as but not limited to traffic, drainage, dramatic land form or parks will not be adversely affected any more than would occur if the development were located as specified in the title; and
- '(5) The hardship is not self imposed and the variance requested is the minimum variance which would alleviate the hardship."

FOR MORE INFORMATION

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