



PETITION TO THE BOARD OF ZONING APPEALS

The Board of Zoning Appeals is a five-member board recommended by City Council and appointed by the Circuit Court. The Board has the authority to a) hear and decide appeals from any written order, requirement, decision, or determination of the Zoning Administrator, b) authorize variances from the zoning ordinance.

A. If you disagree with the decision of the Zoning Administrator, you may file an appeal. **The appeal must be filed in writing within thirty days of the date of the Zoning Administrator's decision.** You must provide a letter detailing the justification for the request, including any supporting documentation.

B. Rules Governing Justification for Variance:

In writing your justification for a variance request, you should carefully consider and select one or both of the following. Section 106-528.1(C) of the Code of the City of Salem states that the Board of Zoning Appeals shall base its required findings upon the particular evidence presented to it in each specific case where the property owner can provide proof to the satisfaction of the BZA that:

1. The strict application of the terms of the ordinance would **unreasonably restrict** the use of the property.
- or
2. That the granting of the variance would alleviate a hardship due to the **physical condition** relating to the property at the time of the effective date of the ordinance or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.

In either case the following criteria must be met:

- ☐ The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
- ☐ The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
- ☐ The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
- ☐ The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- ☐ The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

The Board of Zoning Appeals meets on the fourth Thursday of each month on an as needed basis.

Variances in the Floodway

- (A) The Board of Zoning Appeals, in accordance with section 106-528, may consider petitions for variance(s) from the provisions of this chapter; provided, however, that all relevant factors pertaining to the danger to life and property caused by increased flood levels and velocities due to encroachments are thoroughly examined. In considering applications for variances, the Board shall consider the following factors:
1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 2. The danger that materials may be swept onto other lands or downstream to the injury of others.
 3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
 4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 5. The importance of the services provided by the proposed facility to the community.
 6. The requirements of the facility for a waterfront location and a location within a floodplain district.
 7. The availability of alternate locations not subject to flooding for the proposed use.
 8. The compatibility of the proposed use with existing development anticipated in the foreseeable future.
 9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 10. Safe access to the property by ordinary and emergency vehicles in times of flood.
 11. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
 12. Such other factors which are relevant to the purposes of this division.
- (B) No variance shall be granted for any proposed use, development or activity within any floodway district, except in full compliance with all the following requirements:
1. The variance will not cause any increase in flood levels during the 100-year flood. (Appropriate documentation from a registered engineer must be submitted which substantiates the impact on flood heights, velocities and flows through hydrologic and hydraulic analyses and calculations.) If the variance involves any alterations or relations to a floodway or its channel, such alterations or relocations shall also be approved as required by law.
- (C) The Board of Zoning Appeals shall notify the applicant for a variance(s) in writing that the issuance of a variance(s) to construct a structure below the 100-year flood elevation:
1. Increases the risks to life and property; and
 2. Will result in increased premium rates for flood insurance.
- (A) A record of the notification, as well as all variance actions, including justification for their issuance, shall be maintained, and any variances which are issued shall be noted in the annual report submitted as required by law.
- (B) Variances may be issued for the reconstruction, rehabilitation or restoration of structure listed on the National Register of Historic Places or the state landmarks register without regard to the procedures set forth in this section.
- (C) Requirements for granting a variance within the floodplain shall be as follows:
1. The failure to grant the variance would result in exceptional hardship to the applicant.
 2. The variance will be the minimum relief to any hardship; and
 3. The granting of such variance will not result in:
 - a. Unacceptable or prohibited increases in flood heights.
 - b. Additional threats to public safety.
 - c. Nuisances.
 - d. Fraud or victimization of the public; or
 - e. Conflicts with local laws or ordinances.
 4. The applicant has shown a good and sufficient cause to justify the variance.