

## SEC. 13-1-194 VARIATIONS.

(a) **Purpose.**

- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
- (2) The Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.
- (3) For the purposes of this Section, “unnecessary hardship” shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.

(b) **Application for Variation.** The application for variation shall be filed pursuant to Section 13-1-191.

(c) **Public Hearing of Application.** The public hearing for a variance shall be conducted pursuant to Section 13-1-192.

(d) **Prohibited Variances.** The Board of Appeals shall not grant use variances in floodplain or wetland and conservancy districts. In all other districts, no use variance shall be granted unless the applicant has first petitioned for a zoning amendment or a conditional use permit, if applicable, and upon a showing that no lawful and feasible use of the subject property can be made in the absence of such variance. An use variance granted shall be limited to the specific use described in the Board’s decision and shall not permit variances in yard, area or other requirements of the district in which located.

(e) **Action of the Board of Appeals.** For the Board to grant a variance, it must find that:

- (1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
- (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity
- (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

- (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
- (5) The proposed variation will not undermine the spirit and general specific purposes of the Zoning Code.
- (f) **Conditions.** The Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.

**SEC. 13-1-195 REVIEW BY COURT OF RECORD.**

Any person or persons aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board of Appeals.

**SEC. 13-1-196 THROUGH SEC. 13-1-199 RESERVED FOR FUTURE USE.**