

VARIANCE CRITERIA GUIDELINES

In order for a variance to be granted, an applicant must successfully demonstrate that it would meet all of the following criteria:

1. It must not be contrary to the public interest.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives (see Zoning Ordinance Section 1.02 Purpose). A couple of tests for this are:

- Will the proposal alter the essential character of the neighborhood?
- Will it threaten the public's health, safety or welfare?

2. It must be consistent with the spirit of the ordinance.

Because it is in the public's interest to uphold the spirit of the ordinance, previous court opinions have held that these two criteria are related to each other. The same arguments can be made for both, therefore if you meet one test you almost automatically meet the other.

3. It must result in substantial justice being done.

Again, the courts have ruled that for a variance to be granted under this test, you must show that any loss suffered by the general public would be so minimal that it is outweighed by the gain to the applicant. Conversely, a denial must result in a gain to the general public that outweighs any loss to the applicant. Otherwise it would be an injustice to deny. A test for this would be to demonstrate that the proposal is consistent with current uses in the area.

4. It must not diminish the value of surrounding properties.

Meeting this condition seems fairly obvious, but there are many factors that can influence property values (see again Zoning Ordinance Section 1.02 Purpose). It must be demonstrated that the proposal will have no negative impact on the marketability, and therefore the value, of neighboring properties. Many applicants submit the opinion of a real estate professional for this.

5. It must be shown that denial would result in unnecessary hardship.

Unnecessary hardship can be shown in either of two ways. Both of them depend on the existence of special conditions or circumstances that distinguish the subject property from others in the area.

The first way is to show that because of those special conditions or circumstances, (1) there is no substantial relationship between the general purposes of the ordinance (see Section 1.02) and the specific violation being applied to the property and (2) the proposed use is a reasonable one.

The second way is to show that, again, because of those special conditions or circumstances, the property cannot be used in strict conformance with the ordinance and a variance is needed to enable a reasonable use of it.