

EXHIBIT A - FOR ADOPTION

Chapter 1139 – Variances

1139.01 – General.

(a) Purpose.

A variance permits variation from the strict interpretation of this Code so that no specific provision prevents development of a specific site that would otherwise not be possible and that would satisfy the general intent of the Code. Use variances are prohibited.

(b) Variance Requirement.

Each variance shall be granted according to the provisions of this chapter.

(c) Effect of Variance.

- (1) A variance shall be valid only for the specific use, site, location, and provision for which it is granted and changes to the use and site that change the facts upon which it was granted shall be strictly interpreted.
- (2) A variance does not expire, but becomes invalid if the use, site, or location is changed in some way that changes the facts upon which it was granted.
- (3) An action or construction that is undertaken following the granting of a variance does not create a nonconformity. A variance actually changes the specific provisions of the Code as they pertain to a specific use, site, and location.

(Ord. 3036. Passed 12-2-08.)

1139.02 – Procedure.

(a) Application.

An application for a variance shall be filed with the Zoning Administrator. An application shall be complete prior to being scheduled for an adjudication hearing. An application will be placed on the agenda only if the Zoning Administrator is satisfied that all of the materials required by this chapter are included and are sufficient in their content to satisfy the intent of the application requirements. The Board will not hear any appeal on an application the Board deems incomplete.

(1) Contents of application for variance.

Eight complete sets of all information shall be submitted with an application. The Zoning Administrator may modify this requirement based upon the type of materials included. The applicant is encouraged to contact the Zoning Administrator prior to submitting an application to discuss the submission requirement. If any information is submitted in color or on non-standard paper, more copies may be required.

- A. Application Fee.
- B. Description of Use and Site.
- C. The name, mailing address, and telephone number of the applicant and the property owner.
- D. If the applicant is not the owner, a statement from the owner that the applicant is entitled to apply on his or her behalf (Letter of Agency).
- E. A legal description of the site, including all separate lots.
- F. A description of the existing uses of the site.

- G. The zoning district in which the site is located.
- H. A description of the existing and proposed use.
 - 1. A description of operations, including type of goods sold, services performed, and expected number of customers, clientele, delivery, and service vehicles.
 - 2. The hours of operation.
- I. The nature and magnitude of the requested variance.
- J. The Code section from which the variance is requested.
- K. A separate narrative statement that explains how the proposed variance satisfies each of the Decision Standards required to grant a variance.
- L. A list of the names and mailing addresses of all landowners within 200 feet of the perimeter of the site.

(2) Site Plan.

A scaled site plan shall include the following information in detail. The required information may be submitted on multiple site plans if inclusion of all information on a single plan makes it illegible or difficult to understand.

- A. North arrow.
- B. Scale.
- C. Vicinity map.
- D. All existing and proposed lot lines within the site.
- E. Dimensions of all lots and of the entire site and any adjacent rights-of-way.
- F. Location, height, and use of all proposed and existing structures.
- G. Location and design of all proposed vehicle management areas.
- H. Location, size, and type of all proposed signs.
- I. Location, height, and type of all proposed screening and landscaping.
- J. Distances to residential zoning districts if within 1,000 feet.
- K. The use of land and location of structures on adjacent property and across adjacent rights-of-way.
- L. An indication of the regulation from which the variance is requested.
- M. Other information as required by the Board of Zoning Appeals.

(3) Elevations.

Elevations of proposed structures, or typical elevations if structures are not yet designed, may be required by the Zoning Administrator if the proposed location, height, or bulk of the structure is such that it may negatively affect an adjacent use.

(4) Other.

Photographs of the existing use and its surroundings and other information regarding the proposed use, site, or surrounding area as may be pertinent to the application or required by the Board of Zoning Appeals.

(b) Reapplication.

- (1) No application for a variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked, shall be submitted for one year to the BZA for a decision. The Zoning Administrator shall determine if a similar application differs enough to be considered a different application and not subject to this section. The Zoning Administrator may consider factors such as the nature or size of a proposal, changes in the development or traffic patterns of the area, or newly discovered evidence pertinent to a decision on a previous application.
- (2) An applicant may appeal the decision of the Zoning Administrator to the Board of Zoning Appeals as stipulated in this Chapter and Section 1129.09 of the Planning and Zoning Code.

(c) Board of Zoning Appeals Review.

The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

(1) Burden of proof.

The applicant shall be required to present by preponderance of reliable, probative and substantial testimony evidence that supports the applicants request for a variance.

(2) Decision standards.

The Board of Zoning Appeals will consider the effect of the request on the public health, safety and welfare. Variances shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Planning and Zoning Code inequitable and prevent substantial justice. This determination shall be made without regard to the existence of variances and nonconformities on other land, sites, or structures not presently under consideration, unless evidence is introduced into the record for the purpose of showing a variance was previously granted or denied on a similarly situated property. In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

- A. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
- B. Whether the variance is substantial;
- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restriction;
- F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- H. Any other relevant factor.

(d) Action by Board of Zoning Appeals.

- (1) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings upon which its decision is based.
- (2) The Board of Zoning Appeals shall base its decision only upon the Decision Standards in this Chapter. In its decision, the Board of Zoning Appeals may waive or modify dimensional regulations of the Zoning Code, or impose more strict regulations and any additional conditions, guarantees, and safeguards it deems necessary to satisfy the purposes of this Zoning Code.

(e) Issuance of Permits.

- (1) The Zoning Administrator shall issue permits to permit the action for which a variance was sought after the Board of Zoning Appeals grants a variance. Construction permits shall not be issued unless the plans substantially conform to those upon which a variance was granted. Any action that exceeds a granted variance shall constitute a violation of the Zoning Code.
- (2) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than one (1) year, and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.

(f) Appeal of Board of Zoning Appeals Decision.

- (1) Appeals to the decision of the Board of Zoning Appeals shall be made to the Court of Common Pleas of Butler County.