

SEC. 17.1.193 VARIANCES**(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 ~ 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 Variances. The application for variation shall be filed with the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

(1) Name and address of applicant and all abutting and opposite property owners of record.

(2) Statement that the applicant is the owner or the authorized agent of the owner of the property.

(3) Address and description of the property.

(4) A site plan showing an accurate depiction of the property.

(5) Additional information required by the Village board, Village Engineer, Board of Zoning Appeals or Zoning Administrator.

(6) Fee receipt in the amount of Twenty-five Dollars (\$25.00).

(c) Public Hearing of Application. The Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than ten (10) days before the hearing in one (1) or more of the newspapers in general circulation in the Village, and shall give due notice to the parties in interest, the Zoning Administrator and the Village Board. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Board shall thereafter reach its decision within (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Village Board.

(d) 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 use in the same district and the granting of the variance would not be of a 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 right 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 and specific purposes of the Zoning Code.

(e) **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.