

Variance

8.10 Variance

- A. Authority And Purpose: The Board of Zoning Appeals, may, after a public hearing, vary the regulations of this Zoning Ordinance. Variances shall be granted in accordance with the standards set forth in this section and shall be granted upon findings of fact in compliance with Indiana Code 36-7-4-900 et seq. The Board of Zoning Appeals may grant a variance from the development standards of the Zoning Ordinance (such as height, bulk, area) or a variance of use if, after a public hearing, it makes findings of facts in writing.
- B. Procedures: Application for a variance by the Board of Zoning Appeals shall follow the following procedures.
1. *Time Limitation*. The Community Development Office shall refuse to accept a petition for a variance within 12 months of the date of denial when said petition involves the same subject matter. However, the Community Development Office shall have the authority and discretion to determine that a petition containing major changes may justify re-filing within said 12 month period.
 2. *Eligible Petitioners*. A petition for a variance may be filed by the owner, his agent, or any person having a legal or equitable interest in the subject property, but the written authorization of any owner who is not an applicant shall be required.
 3. *Filing of Forms*. A petition for a variance from development standards or a variance of use shall be made on forms provided by the Board of Zoning Appeals. The application shall be filed with applicable drawings and the filing fee.
 4. *Filing Deadline*. A petition for a variance shall be filed at least 28 days before the date of the meeting.
 5. *Public Notice*. The following public notice standards apply for a petition for a variance.
 - a. For a variance from development standards, the following options for notification are acceptable.
 1. The applicant shall notify all interested parties of the public hearing by certified mail, return receipt requested. Certified mailings shall have a postmark a minimum of 21 days before the date of the public hearing.
 2. The applicant shall notify all interested parties by personally delivering the notice and obtaining the signature of each interested party at least 10 days prior to the date of public hearing. The signature must be of the interested party.
 - b. For a variance of use, the applicant shall notify all interested parties of the public hearing certified mail, return receipt requested. Certified mailings shall have a postmark a minimum of 21 days before the date of the public hearing.
 - c. The petitioner shall publish a legal notice of the hearing in the Butler Bulletin a minimum of ten days before the public hearing. The petitioner is responsible for making the newspapers publishing deadline and the publication cost.
 - d. The petitioner shall present proof of notice of adjacent property owners and proof of publication in the Butler Bulletin to the City of Butler a minimum of three business days before the public hearing.
- C. Public Hearing: A public hearing shall be held in accordance with the Board of Zoning Appeals' Rules of Procedure.
- D. Review:
1. The regulations of this Zoning Ordinance shall not be varied unless findings based on the evidence are made in each specific case that affirm each of the following criteria for a development standards variance:
 - a. The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community.
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
 - c. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

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2. The regulations of this Zoning Ordinance shall not be varied unless findings based on the evidence are made in each specific case that affirm each of the following criteria for a variance of use:
 - a. The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community.
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
 - c. That the need for the use variance arises from some condition peculiar to the property involved.
 - d. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
 - e. The approval does not interfere substantially with the City of Butler's Comprehensive Plan.
- E. Decision: The Board of Zoning Appeals shall approve the petition, approve the petition with conditions and/or commitments or deny the petition.
- F. Duration:
 1. A development standards variance granted by the Board of Zoning Appeals shall run with the parcel until such time as the property conforms with the Zoning Ordinance.
 2. A use variance granted by the Board of Zoning Appeals may run with the parcel or applicant until such time as:
 - a. The use of the variance ends, is vacated, or unused for three months consecutively;
 - b. The property conforms with the Zoning Ordinance as written; or,
 - c. The property is sold.