

Chapter 44—Variances and Appeals

§44.010	Purpose and Intent
§44.020	Jurisdiction and Authority
§44.030	Definitions Referenced
§44.040	Authorized Variances
§44.050	Unauthorized Variance
§44.060	Application for Variance
§44.070	Decision on Variance Application
§44.080	Standards for Variances
§44.090	Burden of Applicant
§44.100	Conditions and Restrictions
§44.110	Withdrawal of Application
§44.120	Re-Application
§44.130	Appeals (From Administrative Ruling)
§44.140	When Appeals May Be Taken
§44.150	When Appeals to Stay Proceedings
§44.160	Decisions on Appeal
§44.170	Withdrawal of Application
§44.180	Proceedings to Prevent Construction of a Building

§44.010 Purpose and intent

The purpose of this chapter is to provide clear guidelines for the granting of variances and administrative appeals to the provisions of this Ordinance.

§44.020 Jurisdiction and Authority

Upon application, the Board of Zoning Appeals (BZA) shall exercise the jurisdiction and authority to grant a variance from the literal terms of this Ordinance in accordance with the procedures, standards, and limitations contained in this Chapter and Chapter 5 of this Ordinance. This authorization shall not be construed to grant the BZA the power to rezone property.

§44.030 Definitions Referenced

The definitions of certain terms referenced in this chapter are set forth in Chapter 3, "Definitions", of this Ordinance, as amended.

§44.040 Authorized Variances

Variances (defined herein as reasonable deviations from the regulations and restrictions contained in this Ordinance) may be granted by the Board of Zoning Appeals only in the following instances:

1. A variance from those provisions regulating the size or area of a lot or parcel of land.
2. A variance from those provisions regulating the size, area, bulk, setback, open space, yards, or location of a building or structure.

One exception to this provision is that the Planning Commission is authorized to grant variances to the provisions of Chapter 25, Planned Development Districts" of this Ordinance, as provided in those chapters and according to the application and hearing procedures of this Chapter.

§44.050 Unauthorized Variance

The BZA shall not be empowered to grant a variance from any of the provisions of this Ordinance relating to the use or density of land, buildings or structures. Nor shall the BZA grant a variance for any use or activity within the floodway portion of the Floodplain Overlay district if any increase in the hundred (100) year flood elevations would result. The BZA may also not make any determination that has the effect of setting a new standard nor rendering any provision of this Ordinance obsolete.

§44.060 Application for Variance

Any person owning property, or having a possessory or contract interest in property and the consent of the owner, may file an application for variance in regard to such property with the Zoning Administrator for one or more of the variances authorized above. The application shall contain the following information and such additional information as the Board of Zoning Appeals may, by rule, require:

1. The particular provisions or requirements of this Ordinance which prevent the proposed construction on, or use of, the property.
2. The existing zoning of the property, including any previously approved modifications, conditions, or proffers.
3. The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this Ordinance.
4. The particular hardship which would result if the specified provisions or requirements of this Ordinance were to be applied to the subject property.
5. The minimum extent to which it would be necessary to vary the requirements of this Ordinance in order to permit the proposed construction on, or use of, the property.
6. An explanation of how the requested variance conforms to each of the applicable findings and standards set out in Chapter 44, §44.080 and §44.090 within this Ordinance.

§44.070 Decision on Variance Application

Upon receipt of a complete application for a variance, the Zoning Administrator shall notify the BZA which shall, within thirty (30) days, hold a duly noticed public hearing thereon. Such public hearing shall be advertised and posted in a manner consistent with the Zoning Procedures Act (O.C.G.A. §36-66-1 et seq.). The BZA shall, after such hearing, either approve, deny or approve with conditions the application for a variance. Its decision shall be supported by findings of fact and conclusions with respect to the findings and standards set out in Chapter 44, §44.080 of this Ordinance. The hearing shall be held in accordance with the requirements set forth in Chapter 40, §40.190 of this Ordinance.

§44.080 Standards for Variances

The Board of Zoning Appeals shall base its required findings upon the particular evidence presented to it in each specific case where the property owner can show that:

1. The strict application of the terms of this Ordinance would effectively prohibit or unreasonably restrict utilization of the property because of:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
 - b. Such conditions are peculiar to the particular piece of such property involved.
 - c. Such conditions were not imposed by the action or will of the owner of the property.
 - d. The application of the Ordinance to the particular piece of property would create an unnecessary hardship. Such hardship does not include financial hardship in that if the variance were granted, the applicant could receive a higher rate of financial return on the use of the property and that without the variance, a lesser but still reasonable return could be realized.
 - e. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance.
2. The granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
 3. The condition or situation of the property which gives rise to the need for such variance is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

§44.090 Burden of Applicant

The applicant for a variance shall bear the burden of producing evidence to establish that the requested variance satisfies the standards for a variance of Chapter 44, §44.080 of this Ordinance.

§44.100 Conditions and Restrictions

The BZA may impose such conditions and restrictions upon the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Failure to comply with any such conditions and restrictions shall constitute a violation of this Ordinance.

§44.110 Withdrawal of Application

A variance may be withdrawn by the applicant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an application may be withdrawn only with the permission of the BZA.

§44.120 Re-Application

If a variance is denied by the BZA on the merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the BZA within twelve (12) months after the date of such denial.

§44.130 Appeals (From Administrative Ruling)

The Board of Zoning Appeals is authorized to hear appeals from any order, requirement, decision or determination made by the Zoning Administrator in the administration or enforcement of this Ordinance. In this capacity the Board exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the Ordinance means and how the Ordinance applies to a particular fact situation.

§44.140 When Appeals May Be Taken

Appeals to the BZA may be taken by any person aggrieved by an officer, department, board or agency of the City or affected by a decision of the Zoning Administrator. Appeals shall be taken within thirty (30) days after the decision has been rendered by filing with the Zoning Administrator from whom the appeal is taken and with the chairman of the BZA a notice of appeal specifying the grounds of the appeal. The Zoning Administrator shall forthwith forward to the chairman of the BZA all the papers constituting the record upon which the action appealed from was taken.

§44.150 When Appeals to Stay Proceedings

A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the BZA that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by the BZA or by a proper court order on notice to the Zoning Administrator and for good cause shown.

§44.160 Decisions on Appeal

Within ninety (90) days after the notice of appeal has been filed, the BZA shall hold a public hearing which shall be advertised and posted in a manner consistent with the Zoning Procedures Act as well as due notice to the parties in interest, decide the appeal, and file with the Zoning Administrator its findings of fact and conclusions with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the decision appealed from. The concurring vote of a majority of BZA members shall be necessary to reverse a decision.

§44.170 Withdrawal of Application

An appeal may be withdrawn by the appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an appeal may be withdrawn only with the permission of the BZA.

§44.180 Proceedings to Prevent Construction of a Building

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Zoning Administrator to the Board of Zoning Appeals.