

Sec. 51.601. - General.

The building/flood board of adjustment and appeals shall hear and decide on requests for appeals and requests for variances from the strict application of this chapter. Pursuant to F.S. § 553.73(5) the building/flood board of adjustment and appeals shall hear and decide on requests for appeals and requests for variances. This section does not apply to Section 3109 of the Florida Building Code, Building.

(Ord. No. 9189-18, § 1, 11-1-18; Ord. No. 9508-21, § 3, 11-4-21)

Sec. 51.602. - Appeals.

The building/flood board of adjustment and appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this chapter. The procedures for the building/flood board of adjustment and appeals are located in Section 47.034 of the city's Community Development Code, and procedures dealing with appeals and variances are located in Section 47.035. In order to grant an appeal, overturning or modifying the decision appealed from, the building/flood board of adjustment and appeals shall find that based on substantial competent evidence presented by the applicant or other party, each and every one of the following criteria are met:

- (1) The decision appealed from misconstrued or incorrectly interpreted the provisions of this chapter;
- (2) The decision of the building/flood board of adjustment and appeals will be in harmony with the general intent and purpose of this chapter; and
- (3) The decision of the building/flood board of adjustment and appeals will not be detrimental to the public health, safety and general welfare.

A decision of the board shall be final, subject to judicial review by certiorari in circuit court.

(Ord. No. 9189-18, § 1, 11-1-18)

Sec. 51.603. - Limitations on authority to grant variances.

The building/flood board of adjustment and appeals shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 51.607, the conditions of issuance set forth in Section 51.608, and the comments and recommendations of the floodplain administrator and the building official. The building/flood board of adjustment and appeals has the right to attach such conditions as it deems necessary to further the purposes and objectives of this chapter.

(Ord. No. 9189-18, § 1, 11-1-18)

Sec. 51.606. - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this chapter, provided the variance meets the requirements of Section 51.604, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(Ord. No. 9189-18, § 1, 11-1-18)

Sec. 51.607. - Considerations for issuance of variances.

In reviewing requests for variances, the building/flood board of adjustment and appeals shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this chapter, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and
- (11) The necessity of the proposed development to a waterfront location, in the case of a functionally dependent use or facility.

(Ord. No. 9189-18, § 1, 11-1-18)

Sec. 51.608. - Conditions for issuance of variances.

Upon consideration of the factors listed in Section 51.607, and the purposes of this chapter, the building/flood board of adjustment and appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. Variances shall be issued only upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this chapter or the required elevation standards. The burden shall be on the applicant to provide documentation, sufficient to the satisfaction of the floodplain administrator, to show that the standards and conditions required for the granting of a variance have been met;
- (2) Determination by the building/flood board of adjustment and appeals that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship. For the purpose of this section, an exceptional hardship can only be caused by a peculiar and unique circumstance related directly to the land and shall not be the result of inconvenience, aesthetic consideration, physical or medical handicap, personal preference, financial considerations, or any after-the-fact circumstance created by the inhabitants of the structure or the present or previous property owners;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the office of the clerk of the court at the applicant's expense, and in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 9189-18, § 1, 11-1-18)