

Legislation Text

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Amending Section 14-303 of The Philadelphia Code, entitled “Common Procedures and Requirements,” by providing for additional requirements with respect to the granting of variances by the Zoning Board of Adjustment; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 14-303 of The Philadelphia Code is hereby amended to read as follows:

§14-303. Common Procedures and Requirements.

Procedures that are common to several types of applications for permits, approvals, or variances are provided for in this section.

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(8) Zoning Variances.

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(e) Criteria for Approval.

The Zoning Board shall grant a variance only if it determines that the applicant has demonstrated that the criteria of this § 14-303(8)(e) (Criteria for Approval) have been met and that any applicable criteria in §§ 14-303(8)(f) (Additional Criteria for Floodplain Variances) through 14-303(8)(h) (Additional Criteria for Height Variances Near the Airport) have been met. *The granting of a variance should be a rare event, and the Zoning Board is authorized to grant a variance only if it expressly concludes that there are substantial, serious and compelling reasons to do so.* Otherwise, the Zoning Board shall deny the variance.

(.1) General Criteria.

The Zoning Board may grant a lesser variance than requested, and may attach such reasonable conditions and safeguards as it may deem necessary to implement this Zoning Code, including without limitation a limitation on the size or duration of the variance, consistent with § 14-303(9) (Conditions on Approvals). The Zoning Board shall, in writing, set forth each required finding for each variance that is granted, set forth each finding that is not satisfied for each variance that is denied, and to the extent that a specific finding is not relevant to the decision, shall so state. *The Zoning Board shall see to it that its detailed findings are posted on the Board's website within five (5) days of its decision, and no grant of a variance shall be effective in the absence of such posting.* The Zoning Board shall file with each decision approving a variance any Project Information Form prepared by the applicant pursuant to § 18-503, but need not attach the Form to the decision; filing of the Form shall not constitute incorporation of its contents into the decision and those contents shall not be binding. Each finding shall be supported by substantial evidence. If the Zoning Board

chooses to view the subject property as part of the hearing, the Zoning Board must provide due process. Reports of other City agencies made as a result of inquiry by the Zoning Board shall not be considered hearsay. Upon request of any party, the Zoning Board may compel the attendance of the City agency. The Zoning Board shall grant a variance only if it finds each of the following criteria are satisfied:

(.a) The denial of the variance would result in an unnecessary hardship. The applicant shall demonstrate that the unnecessary hardship was not created by the applicant and that the criteria set forth in § 14-303(8)(e)(.2) (Use Variances) below, in the case of use variances, or the criteria set forth in § 14-303(8)(e)(.3) (Dimensional Variances) below, in the case of dimensional variances, have been satisfied;

(.b) The variance, whether use or dimensional, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the use or dimensional regulation in issue;

(.c) The grant of the variance will be in harmony with the purpose and spirit of this Zoning Code;

(.d) The grant of the variance will not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare;

(.e) The variance will not substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property;

(.f) The grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities;

(.g) The grant of the variance will not adversely and substantially affect the implementation of any adopted plan for the area where the property is located; and

(.h) The grant of the variance will not create any significant environmental damage, pollution, erosion, or siltation, and will not significantly increase the danger of flooding either during or after construction, and the applicant will take measures to minimize environmental damage during any construction.

(.2) Use Variances.

To find an unnecessary hardship in the case of a use variance, the Zoning Board must make all of the following findings:

(.a) That there are unique physical circumstances or conditions (such as irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions) peculiar to the property, and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of this Zoning Code in the area or zoning district where the property is located;

(.b) That because of those physical circumstances or conditions, there is no possibility that the property can be used in strict conformity with the provisions of this Zoning Code and that the authorization of a variance is therefore necessary to enable the viable economic use of the property;

(c) That the use variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

(d) That the hardship cannot be cured by the grant of a dimensional variance.

(.3) Dimensional Variances.

To find an unnecessary hardship in the case of a dimensional variance, the Zoning Board may consider the economic detriment to the applicant if the variance is denied, the financial burden created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

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(i) *Reporting requirement. No later than December 31 of each year, the Zoning Board shall post on its website a report that contains the following information, and such other information as the Mayor, or Council by resolution, shall from time to time request: a summary of all applications for zoning variances that have been submitted for the twelve-month period ending two months before the date of the report, divided into those applications that were granted in whole or in part, those that were denied, and those that were still pending at the close of the reporting period. The summary shall include a description of each requested variance and the scope of the variance that was granted, if any.*

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(14) Public Hearings of the Zoning Board of Adjustment.

All Zoning Board hearings are subject to the following provisions:

(a) Hearings of the Zoning Board shall be held at the call of the Chairman and at such other times as the Zoning Board may determine.

(b) Three members of the Zoning Board shall constitute a quorum for any public hearing required under this Zoning Code.

(c) No action shall be taken by the Board unless at least three members of the Board, present at the time of the vote, concur; *provided that if the action to be taken concerns the granting of a variance, an affirmative vote in favor of granting the variance requires the concurrence of at least three members of the Board.*

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SECTION 2. This Ordinance shall be effective immediately.

Explanation:

*Italics* indicate new matter added.