

CHAPTER 122

VARIANCES

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122.010. POWER TO GRANT VARIANCES. Subject to the restrictions and provisions contained in this ordinance, the Hearings Officer and the Planning Director shall have the power to vary or modify the strict application of any of the regulations or provisions of this ordinance in any case where such strict application would result in practical difficulties or unnecessary hardship with reference to requirements governing: lot area (except in resource zones), lot width, percentage of lot coverage and height of structure, location, yards, signs, parking and loading space and vision clearance.

The power provided herein to the Hearings Officer and the Planning Director to grant variances from the strict application of the provisions of this ordinance shall be used sparingly, within the limits granted the Hearings Officer and the Planning Director, within the spirit and intent of this ordinance, and applied reasonably to maintain and not abolish the distinctive classifications created by this ordinance. [Amended by Ordinance #88-21, dated November 30, 1988.]

122.015. ADMINISTRATIVE VARIANCES.

- (A) Purpose. The purpose of this section is to allow for Planning Director review of certain minor variances which are limited in scope and which are unlikely to have impacts beyond the property on which they are located.
- (B) Applicability. Administrative Variances may be granted for relief from any dimensional development standard in the Zoning Ordinance, but such relief shall not exceed twenty (20) percent of the specified requirement.
- (C) Procedure and Standards. An application and site plan shall be filed pursuant to Chapter 111 of the Zoning Ordinance. In reviewing the request, the Planning Director shall find that:
 - (1) Granting the variance will not have a detrimental affect on uses and development on adjacent properties;
 - (2) The variance is made necessary, due to natural or physical constraints of the building site; and,
 - (3) The variance is consistent with the Comprehensive Plan designation and the purpose and intent of the applicable Zoning District.
- (D) Process. A determination by the Planning Director regarding such a variance request shall be considered an administrative action as prescribed by Section 111.250 of the Zoning Ordinance. Notice of the Planning Director's decision shall be provided as required by Section 111.270 of the Zoning Ordinance. [Section 122.015 (Administrative Variances) added by Ordinance 94-1, dated January 5, 1994.]

122.020. CONDITIONS FOR GRANTING A FULL VARIANCE. The Hearings Officer may permit and authorize a variance from any dimensional development standard in the Zoning Ordinance, where such relief shall exceed twenty (20) percent of the specified requirement. An application and site plan shall be filed pursuant to Chapter 111 of the Zoning Ordinance. Such a variance may be granted when it appears from the application, and the facts presented at the public hearing, and by investigation that the proposed variance satisfies the following criteria:

- (A) That there are unnecessary, unreasonable hardship or practical difficulties which can be relieved only modifying the literal requirements of the ordinance;
- (B) That there are exceptional or extraordinary circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land, uses, or structures in the vicinity shall not in themselves constitute such circumstances or conditions;

- (C) That granting the application will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises;
- (D) That such variance is necessary for the preservation and enjoyment of the substantial property rights of the petitioner;
- (E) That the granting of the application will not, under the circumstances of the particular case, adversely affect the health or safety of persons working or residing in the neighborhood of the property of the applicant; and
- (F) That granting of the application will be in general harmony with the intent and purpose of this ordinance and will not adversely affect any officially adopted comprehensive plan. [Amended by Ordinance #88-21, dated November 30, 1988.]

122.030. LIMITING VARIANCES. In granting a full variance, the Hearings Officer may impose such limitations, conditions and safeguards as it may deem appropriate so that the spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice be done. The Hearings Officer may limit the time or duration of a variance. The Planning Director may also impose such limitations in granting an administrative variance. If the variance is granted, the applicant will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval by the Hearings Officer or Planning Director. A violation of any such condition or limitation shall constitute a violation of this ordinance. [Amended by Ordinance #88-21, dated November 30, 1988.]

122.050. PUBLIC HEARING AND TIME OF FILING. The application shall be filed at least 45 days prior to the date of public hearing. Notice of public hearings shall be given and the hearing held as prescribed in Chapter 111.

122.060. DECISION OF THE HEARINGS OFFICER. The Hearings Officer shall render his decision on an application for a full variance after the conclusion of a hearing. Notice of the decision shall be provided in accordance with the standards of Chapter 111. [Amended by Ordinance #219, dated September 22, 1978, Ordinance #310, dated July 11, 1984, and Ordinance #88-21, dated November 30, 1988.] [Section 122.070 deleted by Ordinance #88-21, dated November 30, 1988.]

122.080. EFFECTIVE DATE OF VARIANCE. Variances granted by the Hearings Officer and the Planning Director under the provisions of this ordinance shall not be effective until 10 days after the mailing of the notice of decision, unless the action has been called up by the Board of Commissioners as provided by Section 111.290 or an appeal has been taken as provided by Section 111.280, the variance shall not be effective until the Board of Commissioners has acted on action or appeal as provided by Section 111.300. [Amended by Ordinance #88-21, dated November 30, 1988.]

122.090. VARIANCE RIGHT MUST BE EXERCISED TO BE EFFECTIVE. Variance granted under this ordinance shall be effective only when the exercise of the right granted thereunder shall be commenced within one (1) year after the effective date of that variance, unless a longer period be specified or thereafter allowed by the Hearings Officer or Planning Director. In case such right has not been exercised, or extension obtained, the variance shall be void. A written request for an extension of time filed with the director at least 30 days prior to the expiration of the application shall extend the running of the one year period until the Hearings Officer or Planning Director has acted on said request. [Amended by Ordinance #88-21, dated November 30, 1988 and Ordinance 90-19, dated January 2, 1991.]

122.100. CESSATION OF VARIANCE. Discontinuance of the exercise of any right heretofore or hereafter authorized by any variance for a continuous period of six (6) months shall be deemed an abandonment of such variance, and the property affected hereby shall be subject to all the provisions and regulations of this ordinance applicable to the district or zone in which such property is located at the time of such abandonment.

122.110. TRANSFER OF VARIANCE. Any valid variance granted pursuant to this ordinance is transferable unless otherwise provided at the time of the granting of such variance.

122.120. APPEAL TO THE BOARD OF COMMISSIONERS. An appeal may be taken to the Board of Commissioners by any person whose interests are adversely affected or who is aggrieved by the determination of the Hearings Officer or Planning Director on an application for a variance. Such an appeal shall be filed in accordance with the provisions of Section 111.280 of the Zoning Ordinance.

The Board of Commissioners shall review the action of the Hearings Officer or Planning Director, conduct a public hearing, and render a decision as prescribed in Chapter 111 of the Polk County Zoning Ordinance. [Amended by Ordinance #331, dated July 30, 1971; Ordinance #93, dated November 9, 1971; Ordinance #88-21, dated November 30, 1988, Ordinance #89-1, dated February 22, 1989.]

122.130. RESUBMISSION OF VARIANCE APPLICATION. No portion of an application which has been denied by the Hearings Officer, Planning Director, or by the Board of Commissioners shall be resubmitted within a period of one year after such denial. This section does not prevent resubmission of applications withdrawn prior to approval or denial, upon payment of the fee prescribed for a new application. [Amended by Ordinance #88-21, dated November 30, 1988, and Ordinance 91-15 dated July 24, 1991.]

122.140. REVOCATION OF PERMIT. Any variance granted under this Ordinance may be canceled by the Hearings Officer, Planning Director, or Board of Commissioners if it develops or is ascertained that the application therefore contains any false statements. In case of such cancellation, the matter may be referred to the County Counsel for an opinion. In such case, it shall be unlawful for any person to exercise any right granted by the Hearings Officer, Planning Director, or the Board of Commissioners pursuant to such application. [Amended by Ordinance #88-21, dated November 30, 1988.]