# Section 12.4.7 VARIANCE

**12.4.7.5 Review Criteria - Justifying Circumstances**

The Board of Adjustment may grant a variance only if it finds that there are justifying circumstances whereby the application satisfies the criteria of **any one of Sections 12.4.7.5.A. through F in addition to satisfying the general review criteria in Section 12.4.7.6.**

**A. Unusual Physical Conditions or Circumstances**

The variance is necessary to provide reasonable relief from unusual physical conditions or circumstances and the Applicant shows that all the following criteria are met:

1. There are unusual physical circumstances or conditions, including, without limitation:
   a. Irregularity, narrowness or shallowness of the lot;
   b. Exceptional topographical or other physical conditions peculiar to the affected property;
   c. Circumstances or conditions related to drainage conditions and challenges, not including location in a designated floodplain;
   d. Presence of Established Trees that would otherwise be removed with the strict application of standards; or
   e. Unusual physical circumstances or conditions arising from a Conforming, Compliant, or Nonconforming Structure existing on the affected property or on an abutting Zone Lot.
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located except for those adjustments based on any one of the following:
   a. Those based on drainage conditions, as described in subsection B.1.c above; or
   b. Those based on Conforming, Compliant, or Nonconforming Structures, as described in subsection B.1.e above; or
   c. Those based on the reuse of an existing structure when the variance request is to adjust minimum parking standards.
3. The unusual physical circumstances or conditions have not been created by the applicant.
4. The unusual physical condition or circumstance causes the need for the variance.

**B. Neighborhood Compatibility**

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed variance will result in a building form that is more compatible with similar building forms in the Existing Neighborhood in which the subject property is located than a project that complies with this Code's Building Form Standards that address:
   a. Building height,
   b. Siting, and
   c. Design Elements.
2. A proposed variance to Zone Lot area or Zone Lot dimensions will result in a Zone Lot that is as or more compatible with the pattern of Zone Lots in the existing neighborhood in which the subject property is located.
3. For purposes of making a determination of whether the subject property, with the proposed variance, would be more compatible with the Existing Neighborhood, the following rules shall apply:
   a. Existing Neighborhood shall mean shall mean any Zone Lot or similar building form on a Zone Lot that is located on the same Face Block, opposite Face Block, or adjacent Face Block to the subject property. The Existing Neighborhood may extend beyond the aforementioned limits if the Board of Adjustment finds the expansion is reasonable and necessary to make a determination of compatibility with the most relevant existing neighborhood.
   b. While a finding of more compatible does not have to adhere to a strict mathematical formula, such as an exact finding that 51% or more of the existing neighborhood's Zone Lots are dimensioned or contain building form elements similar to the requested variance, the Board of Adjustment shall consider the following in making a final decision based on neighborhood compatibility:
      i. Whether the existing pattern of Zone Lots in the identified existing neighborhood that have Zone Lot dimensions or contain building form elements substantially similar to the subject property that supports a finding of neighborhood compatibility; and or
      ii. Whether the grant of the variance would establish a precedent in the existing neighborhood for similar future requests, which would adversely impact the existing character and built context in the identified existing neighborhood.

**C. Nonconforming or Compliant Uses in Existing Structures**

A variance to increase the floor area occupied by a Nonconforming or Compliant Use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a Nonconforming or Compliant Use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to Nonconforming or Compliant Uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the Nonconforming or Compliant Use became Nonconforming or Compliant, and is in existence at the time of the hearing;
3. On the date on which the use became Nonconforming or Compliant, the use was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. The applicant does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure, and that any authorized increase in occupancy of floor area by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

**D. Affordable Housing**

1. The proposed development or design would result in more Income Restricted Units than would be created without the variance;
2. The variance to the subject standard cannot be accomplished through any specific incentives available in this Code or in mandates for the provision of Income Restricted Units under other City laws; and
3. The purpose of the adjusted standard will still be achieved or substantially advanced if the variance is approved.

**E. Permits Issued in Error**

1. A zoning permit for construction was issued wherein the Applicant or Zoning Administrator made an error in measurement, calculation, or application of one or more Building Form Standards found in Articles 3 through 9 of this Code excluding maximum height in stories;
2. Start of Construction has begun as that term is defined in Article 13 of this Code, and the building element at issue (allowed only because of the error in the permit approval) has been substantially constructed;
3. The permittee reasonably relied on the approved zoning permit for construction in good faith; and
4. Given the stage of completed construction, the effort or cost to comply with the zoning standard is substantially disproportionate to the type, scale, or size of the error/violation.

**F. Limited Tolerance for Construction Errors**

1. CPD approved and issued a zoning permit for construction of a Structure;
2. Start of Construction of the Structure has begun, as "Start of Construction" is defined in Article 13 of this Code;
3. During construction, a violation of one or more Building Form Standards found in Articles 3 through 9 of this Code, except maximum height in stories, occurred;
4. The Structure or portion of the Structure containing the violation has been substantially constructed;
5. The Applicant will face substantial and unreasonable difficulties in fully complying with or correcting the zoning violation; and
6. Given the stage of completed permanent construction, the effort or cost to comply with the zoning standard(s) is substantially disproportionate to the type, scale, or size of the error/violation.

**12.4.7.6 Review Criteria - Applicable to All Variance Requests**

The Board of Adjustment may grant a variance only if the Board finds that, if granted, the variance meets all of the following criteria:

A. Would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.

B. Except as allowed in Section 12.4.7.5, would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted.

C. Would not substantially impair the intent and purpose of this Code.

D. Would not substantially impair the intent and purpose of the applicable zone district.

E. Would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.

F. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.

G. Would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application.

**12.4.7.7 Requirements and Limitations After Variance Approval**

**A. Variances for Construction**

1. Expiration - Effect of Approval

A variance authorizing construction shall expire unless Start of Construction has occurred within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.

2. Requests for Extension

a. The Zoning Administrator may grant up to a 2-year extension of the 3-year or 5-year approval periods for a variance according to the process and limitations contained herein.

b. In considering a request to extend the approval period for a variance, the Zoning Administrator shall consider whether the extension, if granted, would be contrary to the purpose or intent of any text amendment to this Code or change in the zoning designation of the subject property adopted after the original approval date.

c. All requests for extensions shall be submitted to Community Planning and Development in writing before the expiration of the approval period. An extension request shall include:

i. Payment of any required fee for the extension review; and

ii. A narrative stating the reasons for the applicant's or owner's inability to comply with the specified deadlines, listing any text amendments to this Code or changes in the property's zoning designation that have occurred since the original variance approval date and which affect the subject development; and

iii. The anticipated time schedule for completing the development.

d. The Zoning Administrator will review the request for extension and shall approve, approve with conditions, or deny the extension request based on consideration of the following criteria:

i. The Applicant's showing of good cause for the extension, including but not limited to a showing that development was delayed by economic or physical problems beyond the applicant's or property owner's control; and

ii. Consistency with the intent of any text amendments to this Code or changes in the property's zoning designation that have occurred since the original variance approval date and which affect the subject development.

e. The grant of an extension shall be effective and counted as of the date of the original variance's approval period expiration date and not the date the extension request is approved.

f. If the extension is denied, the applicant may re-submit a new application for the same variance, subject to the fees, standards, and procedures in effect at the time of re-submittal.

**B. Variances Unrelated to Construction**

1. Variances unrelated to construction shall expire 180 days after the approval date unless the applicant submits a complete application for a Site Development Plan, zoning permit, or zone lot amendment necessary to execute the approved variance. Failure to obtain an approved Site Development Plan, zoning permit, or zone lot amendment shall automatically extinguish the variance by operation of law.
2. For all other variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the approved variance.

**C. All Variances - Effect of Denial**

1. When the Board of Adjustment denies a request for a variance, no person shall apply for the same variance related to the same use or project scope on the same subject Zone Lot as contained in the denied request for a variance for 3 years from the date of the Board of Adjustment's final decision.
2. The Board of Adjustment may approve an exception to the 3-year limit upon finding the following:
   a. The Applicant has stated good cause for the exception; and
   b. The exception is consistent with the intent of any text amendments to this Code that affect the subject development or changes in the property's zoning designation that have occurred singe the original variance denial.

**D. Lapse of Approved Variances Upon Redevelopment**

A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.