

## CHAPTER 26. VARIANCES

### Sec. 16-26.001. Intent.

The board of zoning adjustment shall have the power to hear, grant or deny variances from the terms of this part as will not be contrary to the public interest when, due to special conditions, a literal enforcement of its provisions in a particular case will result in unnecessary hardship, provided that the spirit of the part shall be observed, public welfare and safety be secured, and substantial justice done.

(Code 1977, § 16-26.001)

### Sec. 16-26.002. Procedures for variances.

(1) Appeals for variances shall be filed with the secretary of the board, and with supporting material as required by rules of the board and this part. The secretary shall establish an agenda for public hearing, cause due notice of the time and place thereof to be published, and give notice to surrounding property owners. No appeal for variance shall be accepted except from the owner or designated agent of the property involved.

(2) *Action by Board:* The secretary of the board of zoning adjustment shall review the facts of each application and shall submit findings of fact and recommendations to the board of zoning adjustment at the time each application is heard.

(3) *Notice of Hearings:* Notice of public hearings shall conform to the same requirements set forth for amendments in chapter 27.

(Code 1977, § 16-26.002)

### Sec. 16-26.003. Conditions of granting a variance.

(1) *Findings Required:* Except as permitted by the provisions of subsection (2) below, variances may be granted by the board only upon making all of the following findings:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;
- (b) The application of the Zoning Ordinance of the City of Atlanta to this particular piece of property would create an unnecessary hardship;
- (c) Such conditions are peculiar to the particular piece of property involved; and
- (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance of the City of Atlanta.

(2) *Exceptions for Preservation of Mature Trees:* Variances to reduce required setbacks may be granted for the sole purpose of preserving mature trees upon making the following findings:

- (a) That the variance is necessary in order to preserve a mature tree (or trees) with a caliper diameter of eight (8) inches or more which would be lost if the setback requirements were strictly applied. Such a variance may only be granted if the city arborist certifies to the board of zoning adjustment in writing that such tree(s) will be lost either by necessary removal for construction or as a consequence of adjacent construction having an adverse impact on the survivability of the tree by virtue of

damage to the root system of the tree(s) or similar dysfunction.

(b) Any variance granted under the provisions of this section shall include a condition that should the subject tree(s) die as a consequence, direct or indirect, of construction despite the granting of the variance, they shall be replaced, at the property owner's or applicant's expense, in accordance with a tree replacement plan prepared by the city arborist. The property owner or applicant shall be required to notify the city arborist of the death of the tree(s) within 30 days.

(c) Variances granted under the provisions of this section may be granted by the board only upon its finding that relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance of the City of Atlanta.

(d) Variances granted under these provisions are specifically exempt from the provisions of subsection (1)(a)--(c).

(3) *Prohibition Against Granting Use Variances; Exceptions:* No variance may be granted for a use of land or building or structure that is prohibited by the Zoning Ordinance of the City of Atlanta. The board shall have no power to grant a use which is not otherwise permitted within the district regulations; except, however, the board of zoning adjustment may waive or modify the provisions of sections 16-11.006(1), 16-12.006(1), 16-13.006(1), 16-14.006(1), 16-16.006(1), and 16-17.006(1), "Transitional Uses," so as to permit drive-in facilities, service stations, mortuaries or funeral homes, or sales lot for automobiles to be located adjacent to residential districts. Such approval shall be granted in the form of a special exception in the manner provided by section 16-25.001(c), 16-25.002, and 16-25.005 of this part.

(4) *Limitations Against Granting Variances to the Sign Regulations:* See section 16-28A.016.

(5) *Tree Preservation and Replacement:* Any proposed variance shall be granted only upon a finding by the board of zoning adjustment that tree preservation and replacement plans are in accordance with the requirements of the City of Atlanta Tree Ordinance.

(Code 1977, § 16-26.003; Ord. No. 1999-79, § 4, 11-9-99)

#### **Sec. 16-26.004. Variances may contain conditions and safeguards.**

The board may impose such conditions relating to the variance application as it may deem necessary in the particular case to protect the public interest.

(Code 1977, § 16-26.004)

#### **Sec. 16-26.005. Variances apply to property.**

When granted, a variance, together with any conditions or safeguards attached, shall apply to the land or use or which it was issued, and not to a particular person.

(Code 1977, § 16-26.005)

#### **Sec. 16-26.006. Special exceptions.**

In addition to the special exceptions enumerated in chapter 25 which the board of zoning adjustment is empowered to consider, the board may also waive or reduce the parking and loading requirements in any of the districts when the character or use of the building is such as to make unnecessary the full provisions of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot.

(Code 1977, § 16-26.006)

**Sec. 16-26.007. Appeals from decisions of the board of zoning adjustment.**

(1) Any person aggrieved by a decision of the board, or any officer, department, board or bureau affected by such decision, may appeal from such decision to the Superior Court of Fulton County by filing with the clerk of said court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after decision of the board is rendered.

(2) *Notice to Board:* Upon such filing, the clerk of the superior court shall give immediate notice thereof to the secretary of the board. Within the time prescribed by law, the board shall cause to be filed with said clerk a duly certified copy of the proceedings had before the board, including a transcript of the evidence heard before it, if any, and the decision of the board.

(3) *Judicial Procedure, Superior Court:* Thereafter at the next term of the superior court, or in vacation upon 10 days' notice to the parties, the judge of such court shall proceed to hear and pass upon the appeal. In determining the questions presented by the appeal, the court shall determine whether the decision of the board is correct as a matter of law.

(4) *Supersedeas May Be Granted:* The filing of an appeal in the superior court from any decision of the board shall not ipso facto act as a supersedeas, but a supersedeas may be granted by the court upon such terms and conditions as may seem reasonable and proper.

(Code 1977, § 16-26.007)