

#### **12.4.7.5 Review Criteria - Showing of Unnecessary Hardship**

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of any one of paragraph A. or B. or C. or D. or E. of this subsection and satisfies the criteria of Section 12.4.7.6, Review Criteria - Applicable to All Variance Requests.

##### **A. Disability**

1. There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property.

##### **B. Unusual Conditions**

1. There are unusual physical circumstances or conditions, including, without limitation:
  - a. Irregularity, narrowness or shallowness of the lot, or
  - b. Exceptional topographical or other physical conditions peculiar to the affected property; or
  - c. Unusual physical circumstances or conditions arising from an existing, nonconforming or compliant structure on the affected property, and
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
3. The development or use of the property cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; however, loss of a financial advantage, hardship that is solely financial, or the fact that a more profitable use of the property might be had if a variance were granted are not grounds for a variance; and
4. The unusual physical circumstances or conditions have not been created by the applicant.

##### **C. Designated Historic Property or District**

The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a Historic Structure or is in a designated historic district. As part of the review pursuant to D.R.M.C., Chapter 30 (Landmark Preservation), the approving authority has found that development on the Zone Lot conforming to this Code's regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.

##### **D. Compatibility with Existing Neighborhood**

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed adjustment or variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.
2. "Existing neighborhood" shall mean:
  - a. For changes in building or site elements within the rear 35% of a zone lot: Any similar zone lot or building on a zone lot which is located on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley).
  - b. For changes in building or site elements within the front 65% of a zone lot: Any zone lot or primary building on a zone lot which is located on the same face block or the face block across a public street from the subject building.
3. For purposes of a variance review only, the Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of

compatibility with the existing neighborhood. This allowance does not apply to review of a request for an administrative adjustment.

**E. 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.

**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:

- A. Would not authorize the operation of a primary, accessory, or temporary use other than those uses specifically enumerated as permitted primary, accessory, or temporary uses for the zone district in which the property is located.
- B. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.
- C. Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
- D. Would not substantially impair the intent and purpose of this Code.
- E. Would not substantially impair the intent and purpose of the applicable zone district.
- F. Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property.
- G. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- H. 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. Expiration**

1. A variance authorizing construction shall expire unless substantial construction has started 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. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.
3. 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.