

Ordinance 2021-01 Amended, to allow for Variance, 2021-01A

An Ordinance providing for variances.

Be it ordained by the County of Fall River that the following variance ordinance be adopted.

The purpose of the variance is to modify the strict application of the specific requirements of Fall River County Zoning Ordinances, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land; the variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his or her lot as the ordinance intended.

(A) Application procedure.

(1) A property owner may make application for a variance using forms available from the County Auditor's Office. A fee of \$500.00 shall accompany the application.

(2) The applicant shall, by certified mail or personal contact, where the applicant acquires signatures of each adjacent property owner, shall notify all property owners within the setback requirements prescribed by ordinance, exclusive of rights-of-way, as to the nature of the variance request and the time and date and location at which the request will be considered. A list of those property owners and their mailing addresses shall be provided to the County Auditor prior to the public hearing on the matter.

(3) Upon application for a variance, the applicant shall place a sign, provided by the county, on the property in clear view of the public right-of-way identifying that the property is being considered for a zoning variance. The sign shall be placed on the structure or post not less than ten days prior to the public hearing on the matter and shall remain until a decision on the request has been made.

(4) Upon receipt of the application, legal notice shall be published in the County's official newspaper of the date, time and place of the public hearing at least ten days prior to the hearing.

(5) The Board shall issue its decision within 30 days of the hearing, except that the applicant may request a continuance.

(B) Standards for variances.

(1) Variances shall be granted only where the special circumstances or conditions fully described in the finding of the Board, do not apply generally in the district.

(2) Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

(3) For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicants of a reasonable use of their land. Mere loss in value shall not justify a variance; there must be a deprivation of beneficial use of land.

(4) Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

(5) The granting of any variance is in harmony with the general purposes and intent of this chapter and will not be injurious to the neighborhood, detrimental to the public welfare or in conflict with any plan for development.

(C) *Requirements for the granting of a variance.* Before the Board shall have the authority to grant a variance, the persons claiming the variance have the burden of showing:

- (1) The granting of the permit will not be contrary to the public interest;
- (2) The literal enforcement of this chapter will result in unnecessary hardship;
- (3) That by granting the permit contrary to the provisions of this chapter, the spirit of this chapter will be observed;
- (4) By granting the permit, substantial justice will be done.

(D) *Denial of variance.* In the event the request for a variance is denied by the Board, reapplication shall not be permitted for a period of one year, unless the Fall River County Board of Commissioners determines that the circumstances surrounding the request have substantially changed.

(E) *Court review.* Any person, firm or corporation aggrieved by any decision of the Board may appeal the decision to the Circuit Court. Appeals must be made within 30 days of the decision of the Board.

(F) *Costs.* Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Adopted this 6th day of January, 2022 by the Fall River County Commission. This ordinance shall become effective on the twentieth (20th) day after publication.

FALL RIVER COUNTY COMMISSION:

Joe Falkenburg
Joe Falkenburg, Chairman

ATTEST:

Aaron Eberle (to attest)
Sue Ganje, Auditor

First Reading: December 30, 2021

Second Reading: January 6, 2022

Adopted: January 6, 2022

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