

# CITY OF CONCORD

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*In the year of our Lord two thousand and twenty-one*

**AN ORDINANCE** amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement

## **The City of Concord ordains as follows:**

**SECTION I:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, Section 28-9-3, Decisions by the Zoning Board of Adjustment (ZBA), by amending subsection (c) Variances, as follows:

28-9-3 – Decisions by the Zoning Board of Adjustment (ZBA)

(c) Variances.

- (1) *Consideration of Appeals.* Upon submission of an appeal, the ZBA may authorize a variance from the terms of this ordinance for a particular use, a parcel of land, an existing building, or a proposed building.
- (2) *Requisite Findings.* The ZBA may authorize a variance from this ordinance only where **the record supports** ~~[it confirms in writing all of]~~ the following:
  - a. Special circumstances exist such that an unnecessary hardship would be imposed by a literal application and enforcement of the provisions of this ordinance, and the circumstances which create this hardship are that the provisions of this ordinance interfere with the reasonable use of the property considering the unique setting of the property in its environment, that no fair and substantial relationship exists between the general purposes of the ordinance and the specific provisions affecting the property, and that the variance would not injure the public or private rights of others;
  - b. The relief sought is the minimum necessary to result in reasonable use of the property;
  - c. Authorization of a variance will not be contrary to the public interest;
  - d. The spirit of this ordinance shall be observed and substantial justice done in the authorization of a variance; and
  - e. No diminution in the value of surrounding properties would be suffered as a result of the authorization of a variance.

- (3) *Additional Findings Required in the Flood Hazard (FH) District.* Where a variance is requested from the provisions of Section 28-3-2, Flood Hazard (FH) District, of this ordinance, the ZBA may grant a variance as authorized by RSA 674:33, I (b), and in accordance with the following:
- a. The applicant shall have the burden of demonstrating the following criteria in addition to those required under state law and pursuant to Section 28-9-3(c)(2):
    1. The variance will not result in increased flood heights of any magnitude, additional threats to public safety, fraud on or victimization of the public; or extraordinary public expense;
    2. The issuance of the variance will not conflict with other State, Federal or local laws or Ordinances;
    3. If the requested variance is for activity within a floodway, no increase in flood levels during the base flood discharge will result; and
    4. The variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b. The Zoning Board of Adjustment shall notify the applicant in writing that:
    1. The issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
    2. Such construction below the base flood elevation increases risks to life and property.
  - c. The Zoning Administrator shall maintain a written record of all variance actions, including the justification for their issuance.
- (4) *Burden of Persuasion.* The applicant bears the burden of presenting evidence sufficient to allow the ZBA to reach conclusions and make findings to support the authorization of a variance.
- (5) *Stipulations of Authorization.* In authorizing a variance, the ZBA may impose such conditions and stipulations as it deems necessary and proper in order to fulfill the purposes and intents of this ordinance. In granting a variance from the provisions of Section 28-3-2, Flood Hazard (FH) District, of this ordinance, the ZBA shall notify the applicant in writing that construction below the required elevation will result in the following:
- a. Increased premium rates for flood insurance; and
  - b. Increased risk to life and property.
- (6) *Expiration of a Variance.* If the use or construction so authorized by a variance has not commenced within a two-year period from the date of the decision of the ZBA, or in the event of an appeal to the courts of the variance or the project to which it relates,

within a two-year period from the date of the judgment of the court, then the variance shall be deemed to have expired and the ZBA's authorization shall be considered null and void. Upon request, submitted prior to the date of expiration, the ZBA may extend the period of validity of a variance for one additional year provided that the applicant presents evidence of a good faith effort made to commence the use or construction so authorized by the variance, that the delay in commencement was beyond the applicant's control, and that the circumstances relating to the property and the surrounding neighborhood have not changed substantially since the date of the original decision. Once an extension has been granted, should the use or construction so authorized by a variance not be commenced within the one year extension period, then the variance shall be deemed to have expired and the ZBA's decision rendered null and void.

(7) *Abandonment or Discontinuance of a Variance.* If after commencement, a variance is abandoned for a period of two (2) years, or otherwise replaced by a conforming use, then the variance shall be deemed to have expired and cannot be re-established without a new application process and affirmative decision of the ZBA.

**SECTION II:** This ordinance shall take effect upon its passage.

Explanation:

Matter added to the current ordinance appears in ***bold italics***.

Matter removed from the current ordinance appears in [brackets and ~~struck through~~].