

ORDINANCE NO. _____
CASE NO. ORA21-0001
AMENDMENT RE: FINDINGS FOR APPROVAL OF VARIANCES

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO LAND USE REGULATION; AMENDING SECTION 8.8.203 OF THE KOOTENAI COUNTY CODE TO PROVIDE CLEARER AND MORE PARTICULAR FINDINGS WHICH MUST BE MADE FOR AN APPLICATION FOR A VARIANCE TO BE GRANTED, AND TO PROVIDE A THIRTY (30) DAY PUBLIC COMMENT PERIOD FOR APPLICATIONS FOR AN ADMINISTRATIVE VARIANCE IN LIEU OF A PUBLIC HEARING; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION 1. That Section 8.8.203, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.8.203: VARIANCES:

A. General Provisions.

1. Purpose. The purpose of this section is to authorize such variances from the provisions of this title in specific exceptional cases as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship.

2. Description. A variance is a modification of the bulk and placement requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other provision of this title affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.

3. No nonconforming use of neighboring land, structures, or buildings in the same zone, and no permitted or nonconforming use of lands, structures, or buildings, in other zones shall be considered grounds for the issuance of a variance.

B. Application Requirements. The following items constitute a complete application:

1. A completed application form signed by the property owner;
2. The appropriate application fee;
3. Photographs of the site, including the area that pertains to the variance (if applicable);

4. A map of the vicinity of the property for which the variance is sought;
5. A narrative that includes:
 - a. a written explanation of the variance that is requested;
 - b. the applicable sections of this title, and
 - c. an explanation of how the request meets the approval standards and conditions outlined in this section.
6. A site plan for the property, drawn to scale, showing a north arrow, property lines, structures, driveways, surface water, retaining walls, easements, rights-of-way, wells, sewage systems, slopes, stormwater systems and other items as may be required by the County. The maximum allowable size of the site plan is 11" x 17".

C. Procedures for Granting Variances:

1. The applicant shall submit a complete application meeting the application requirements set forth in subsection (B) of this section. Incomplete applications will not be processed.
2. If the application is complete, the Department will forward it to other reviewing agencies and organizations with relevant expertise or jurisdiction, requesting their comment within thirty (30) days. Agency comments should include any agency requirements and whether the requested variance would be in conflict with the public interest. All such comments shall become a part of the record of the application.
3. After all required agency letters are received, notice of public hearing shall be given, and a public hearing held, in accordance with article 8.4 of this chapter.
4. The hearing body shall not recommend for approval, and the board shall not approve, a variance except upon the following findings:
 - a. The applicable procedural requirements have been met;
 - b. An undue hardship exists because of characteristics of the site;
 - i. The subject property has exceptional or extraordinary physical characteristics such as irregularity, narrowness, shallowness, or slope.
 - ii. Because of these physical characteristics, the strict application of the provisions of this title that are the subject of the requested variance would create an exceptional or undue hardship upon the property owner.
 - iii. The hardship is not self-imposed.
 - c. ~~The granting of the~~ variance will not be in conflict with the public interest.

- i. The variance will not adversely affect the use of adjacent property as permitted under this title.
 - ii. The variance will not change the character of the zone in which the property is located, and is in keeping with the intent of this title, the Comprehensive Plan, and any applicable Area of City Impact agreement or other intergovernmental agreement.
 - iii. The variance will not adversely affect the health, safety, and welfare of the citizens of Kootenai County.
- ~~d. The variance is the minimum variance that will make possible the use associated with the request.~~

5. In conjunction with the granting of any variance request, the hearing body may recommend, and the board may impose, conditions of approval which further the purposes of this title and are roughly proportional, both in nature and extent, to the impacts of the variance. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation governed under article 8.6 of this chapter.

D. Specific Approval Standards and Conditions for Flood Variances.

1. The issuance of variances to flood damage prevention standards contained in chapter 7, article 7.2 of this title shall be for flood plain management purposes only. The granting of a variance to such standards will not reduce, and may increase, flood insurance premiums, which are determined on the basis of actuarial risk in accordance with federal law.
2. The granting of variances will generally be limited to new construction and substantial improvements on lots of one-half (½) acre or less, contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases beyond one-half acre, the technical justification required for issuing a variance will increase.
3. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed work will not preclude the structure's continued designation as an historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure.
4. Variances shall not be issued within a designated floodway.
5. Variances shall be issued only upon the findings set forth in paragraph (C)(3) of this section, and the following additional findings:
 - a. Good and sufficient cause exists for the variance. For purposes of this subsection, a variance is based on "good and sufficient cause" if:
 - i. The variance solely concerns site-specific physical characteristics which are uniquely inherent to the property that is the subject of the request and will not change or be significantly altered over time;

- ii. The property possesses physical characteristics so unusual that full compliance with the provisions of this article would create an exceptional hardship related to the property, the surrounding property owners, or the community in general; and
 - iii. The unusual physical characteristics are unique to the property and are not shared by adjacent parcels or typical of other parcels in the community.
 - b. Failure to grant the variance would result in exceptional hardship to the applicant;
 - c. The granting of the variance will not result in increased flood heights, will not harm other properties, will not result in additional threats to public safety or result in extraordinary public expense, and will not create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances;
 - d. Adequate measures will be taken to minimize flood damage; and
 - e. The variance is the minimum necessary, considering the flood hazard, to afford relief.
6. In reviewing applications, the following factors shall be considered:
- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The compatibility of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;

- l. Any technical evaluations in the record;
- m. Any applicable standards specified in other sections of this title; and
- n. All other factors relevant to the request.

7. Any applicant to whom a variance is granted shall be given written notice, signed by the chairman of the Board and maintained with the record of the variance action, of the following:

- a. That the issuance of a variance is for flood plain management purposes only and that it will not reduce, and may increase, flood insurance premiums, which are determined on the basis of actuarial risk in accordance with federal law;
- b. That the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for every \$100 of insurance coverage;
- c. That such construction below the base flood level increases risks to life and property; and
- d. That the County shall not be liable for any flood damages that result.

8. In approving a variance, the Board may attach conditions which further the purposes of this title and are roughly proportional, both in nature and extent, to the impacts of the variance. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation subject to enforcement action pursuant to article 8.6 of this chapter, and shall render the variance null and void.

9. The County shall maintain the records of all variance and appeal actions, including justification for their issuance, and report any variances issued in its annual report to the Federal Insurance and Mitigation Administration.

E. Administrative Approvals.

1. An administrative exception, not to exceed one foot (1') of any dimensional requirement pertinent to front, side, rear, and flanking streets setbacks may be granted by administrative action of the Director without public notice and without public hearing. No administrative exception which constitutes a variance to flood damage prevention standards shall be granted.

2. A variance to a front, side, rear, or flanking street setback from a private road, private right-of-way, or shoreline may be granted by administrative approval of the Director pursuant to the procedure and approval standards set forth in this section, except that a thirty (30) day public comment period shall be provided in lieu of the requirement for a ~~no~~-public hearing ~~shall be~~ required.

3. Variances to setbacks from shorelines granted pursuant to this subsection shall not authorize the construction of structures or mechanical ground disturbances in a shoreline management area except as permitted in section 8.7.111 of this title.

4. Decisions made by the Director pursuant to this subsection may be appealed in accordance with article 8.5 of this chapter.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.

SECTION 4. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

ADOPTED this ____ day of _____, 2021.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**

Chris Fillios, Chairman

Leslie Duncan, Commissioner

Bill Brooks, Commissioner

ATTEST:
JIM BRANNON, CLERK

By: _____
Kathryn Ford, Deputy Clerk

Publication Date: _____, 2021