

VARIANCE PROCESS - FREQUENTLY ASKED QUESTIONS

- ***What is a variance?***

A variance is a formal request by a property owner for relief from one or more of the Town's land-use regulations. If approved, it grants an administrative exception to those regulations, typically the Town's Zoning Code, which can be found in Chapter 18.10 Zoning of the Beaux Arts Village Municipal Code (BAV MC). A link to the Town's municipal code can be found at www.beauxarts-wa.gov.

When a property owner applies for a building permit, the Town reviews the application for compliance with its construction-related codes: primarily the Building Code and the Zoning Code, though the Town's Right of Way Code, Tree Code and other codes may also apply.

The Building Code regulates how the structure is designed and built with special emphasis on issues of safety. The Town has adopted the State Building Code (and by reference the International Residential Building Code) and may not grant any variance or deviation from it.

The Zoning Code regulates land use within the Town of Beaux Arts Village with emphasis on the size, location, and placement of structures on a property. Sometimes there are unique circumstances on a property that make compliance with the Zoning Code unreasonable. In such cases, a property owner may request a variance seeking permission to build something that does not comply with the code. The Hearing Examiner is empowered by the Town Council to hear such requests and decide whether to grant the variance based on whether the proposal meets specified criteria. Rules regarding variances, including the criteria to be met, the land-use regulations for which a variance may be granted, and other information about the process can be found in BAV MC 18.10.170 Variances.

- ***What is a variance application packet?***

The variance-application packet contains the materials needed to complete and file an application for variance with the Town, including the application form, checklist, instructions for submittal, and the Town Zoning Code.

- ***How do I apply for a variance?***

You should review the materials in the variance application packet to become familiar with the contents and the rules governing variances. Next, you should fill out the variance application, providing all the information requested on the form, prepare any additional written documentation describing how your proposal meets the criteria for a variance, and collect any drawings or pictures that help illustrate your proposal. Once this information is ready, you should contact the Town Clerk to make arrangements for submitting your application and paying the appropriate applications fees.

- ***When will the Hearing Examiner hear my request?***

The Town Clerk works with the Hearing Examiner to determine a date for a public hearing based on the date the application is filed with the Town, the availability of meeting space, and

the time needed for staff to review the request. Typically the hearing is set for a date about 3 weeks after a complete application is filed with the Town.

During the three weeks, the Town Planner will review your application, including supporting documentation and drawings or pictures, and will prepare a Staff Report for the Hearing Examiner setting forth the facts of your request, whether those facts meet the criteria for granting a variance, and recommending whether to grant or deny it based on those facts. You will receive a copy of this report prior to the Hearing Examiner's public hearing.

Also, during the three weeks, the Town Clerk will make arrangements for meeting space and notices of the public hearing, which will be published in the Seattle Times, mailed to owners of property situated within 300 feet of the proposed work, posted on mailstands throughout Town so that residents and/or neighbors who may be affected by the proposal have an opportunity to review and comment on it.

- ***Should the applicant and/or agent attend the meeting?***

Yes, you or your agent should be present at the public hearing to explain your project and answer questions.

- ***If the application is not complete or a criterion is not addressed fully, will the Hearing Examiner or Planner fill in the blanks?***

No, the responsibility for completing the variance questionnaire rests solely with the applicant. The Town Planner will do his/her best to identify parts of the application that need more information while preparing the Staff Report and may return the application to the applicant with a request for the additional information. However, if the description of how the project meets all of the criteria is not fully supported by written documentation and appropriate drawings or pictures, the Hearing Examiner may find that information submitted is insufficient and the criteria are not satisfied.

The Hearing Examiner must determine that all five criteria have been satisfied in order to grant your variance.

- ***Is the endorsement of neighbors important?***

You are neither encouraged nor discouraged from seeking the endorsement of neighbors or Village residents. The Hearing Examiner will decide the value of such comments and whether they help establish that the variance criteria are met.

- ***If my neighbor was granted a variance and I think my circumstances are similar, may I assume my request will be granted?***

No, variances are exceptional in nature, and no property or request is identical. A variance decision for one property does not establish a precedent for another circumstance or property, similar or not. The Hearing Examiner makes all variance decisions on a case-by-case basis.

- ***How does an applicant demonstrate that the request is the minimum necessary?***

In your application, you must demonstrate that special circumstances exist and that, because of these circumstances, you are unable to site or design your project in full compliance with the Town Zoning Code. The Hearing Examiner expects to be convinced that your proposal is the minimum degree of non-conformity needed to accommodate your project.

- ***Should the applicant try to explain and discuss the variance with Hearing Examiner members prior to the meeting?***

No. You should not have any communications with the Hearing Examiner outside of the public hearing. Such *ex parte* communication is prohibited and may form the basis of an appeal by any party of record. Because these hearings are quasi-judicial proceedings, the Hearing Examiner must disclose fully all communications regarding your variance request that may have taken place prior to the hearing. If you have questions or need to explain your circumstances more completely, you should contact the Town Planner during the application-review period.

- ***What do the variance criteria mean?***

To answer that question, let's review each of the variance criteria.

Criterion 1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.

Special privilege is defined as an exceptional privilege beyond the uses available to other Villagers.

Limitations upon uses of other properties is defined as uses that include, but are not limited, to setbacks, height, gross floor area, lot coverage and impervious surface.

Criterion 2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

Materially detrimental to the public welfare is defined as adversely affecting a neighbor's property; adversely affecting the rights of Villagers to enjoy Town property and property owned by the Western Academy of Beaux Arts; and causing safety concerns for pedestrians and traffic.

The Comprehensive Plan is a guide for all development in the Town. You may obtain a copy from the Town Clerk or visit the Town website.

Criterion 3. The variance is necessary because of special circumstances relating to size, shape, topography, location, surroundings and features of the subject property.

Special circumstances are listed above and defined as unique features of the property on which the structures are located. **Features** may include, but are not limited to, trees, or other unique natural or built aspects of a property that have community value.

Criterion 4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

Owner is defined, for the purposes of this criterion, as the current owner.

Actions previously taken is defined as the current perceived hardship is created (1) by a past action of the current owner; or (2) as a remedy for a current unapproved or non-conforming action.

Criterion 5. It is the minimum necessary to permit the owner reasonable use of the property.

Minimum is defined as the least amount of non-conformity needed to grant relief from the zoning code regulation.

Reasonable use of the property is defined as use in keeping with the general level of use of similar properties in Town.

- ***What is the Hearing Examiner's process in reviewing an application?***

The Hearing Examiner reviews all material submitted by the applicant, the Town Planner, and the public prior to the hearing to become familiar with your variance request. Prepared with this factual information, the Hearing Examiner is then ready to conduct an Open Record Hearing for the applicant and public as to whether the variance application does satisfy the five criteria. Upon conclusion of the Open Record Hearing, the Hearing Examiner will close the hearing to further testimony, deliberate on all input received, and make its decision.

- ***How is an Open Record Hearing conducted?***

The Hearing Examiner will open the public hearing and follow these steps in order.

1. Acknowledgement of *Ex Parte* Communications/Appearance of Fairness
2. Presentation of Staff Report (usually by the Town Planner)
3. Testimony of Applicant (including any response to Staff Report)
4. Testimony of Public, including the presentation of written comments received by the Town Clerk prior to the hearing.
5. Response by Applicant to Public Testimony
6. Response by Staff, if any
7. Questions by Hearing Examiner of Staff, Applicant and Public
8. Adjournment of Open Record Hearing. After the hearing is adjourned, no more testimony from the applicant or public will be heard. The Hearing Examiner will collect the application materials, including all exhibits submitted during the course of the hearing and his/her notes to assist in reviewing the request and reaching a decision. This review will take place at a later date.

- ***When will I know the Hearing Examiner's decision and when is action on the variance complete?***

When the Hearing Examiner has completed his/her review and reached a decision on the variance, he/she will prepare a document called “Findings of Fact, Conclusions and Decision” for the variance request. This document will be sent to the Town Clerk for distribution to the applicant and any parties of record who have requested a copy. The date the findings are distributed is the date of the action on the variance, i.e. the date after which the variance is in force. From that date, a 14-day **appeal period** begins.

- ***What is an appeal period?***

An appeal period is required to allow any Party of Record (i.e. any person who gave testimony entered into the record) or the Applicant to appeal the Hearing Examiner's decision. When a variance is granted or granted with conditions, no permit may be issued until the appeal period is concluded. When a variance is denied, the applicant must notify the Town Clerk in writing of their intention to appeal within 14 days of the action on the variance. Such appeals are heard at a Closed Record Hearing before the Town Council. Because the record for such a hearing is closed, no **new** evidence or testimony will be accepted or heard. The Town Council will review the appeal to determine (1) whether the Hearing Examiner conducted its Open Record Hearing according to the legal procedures set by state and local statutes and (2) whether there was substantial evidence to support the findings of the Hearing Examiner.