

Article 12

Appeals, Variances and Interpretations

Section 12-1 Appeals

- (A) An appeal from any final order or decision of the administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the administrator.
- (B) An appeal must be taken within 30 days after the date of the decision or order is made.
- (C) Whenever an appeal is filed, the administrator shall transmit to the Board of Adjustment all the materials of the case.
- (D) An appeal stays all actions by the administrator enforcing the requirements of this ordinance.
- (E) The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that, in its opinion, ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

Section 12-2 Variances

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator.
- (B) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:
 - (1) if the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property;

- (2) the hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
 - (3) the hardship relates to the applicant's land, rather than personal circumstances;
 - (4) the hardship is unique, or nearly so, rather than one shared by many surrounding properties;
 - (5) the hardship is not the result of the applicant's own actions; and,
 - (6) the variance will neither result in the extension of a nonconforming situation in violation of Article 10 nor authorize the initiation of a nonconforming use of land.
- (C) A variance may be issued for an indefinite duration or for a specified duration only.

Section 12-3 Interpretations

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the administrator, they shall be handled as provided in Section 12-1.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (C) Where uncertainty exists as to the boundaries as shown on the Town of Creswell Official Zoning Map, the following rules shall apply:
- (1) boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
 - (2) boundaries indicated as approximately following lot lines, town limits, shall be construed as following such lines, limits or boundaries;

- (3) boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines; and
- (4) where a district boundary divides a lot or where distances are not specifically indicated, the boundary shall be determined by measurements from the Official Town of Creswell Zoning Map.

Section 12-4 Burden of Proof in Appeals and Variances

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 12-1, the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions on those issues remains with the applicant seeking the variance.

Section 12-5 Board Action on Appeals and Variances

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the Board of Adjustment's membership (excluding vacant seats).
- (B) Before granting a variance, the Board of Adjustment must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the required findings stated. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 12-2 (B) above shall include a statement of the specific reasons or findings of fact supporting such motion.