



VARIANCE APPLICATION

Application Fee of \$175.00

APPLICANT INFORMATION

Address of Subject Property:

Name and Address of Applicant:

Daytime Phone Number:

Property Interest (Owner, Lessee, Renter, Etc.):

() _____

Name and Address of Owner (if different than applicant):

NATURE OF REQUEST

Description and Reason for Variance Request:

I hereby certify that I have familiarized myself with the rules and regulations with respect to preparing and filing this application and that the above statements and those contained in any papers or plans submitted herewith are true to the best of my knowledge.

Signature

Date



PLANS REQUIRED:

All applications must be accompanied with two (2) sets of scaled plans on standard-sized paper (8.5" x 11" sheets) showing the following details:

1. All property lines and their dimensions.
2. All existing structures, their dimensions and distances from property lines.
3. All proposed structures, their dimensions and distances from property lines.
4. The location, design and dimensions of all walkways, driveways and parking spaces.
5. Any other feature, which may be pertinent to this variance application.
6. Name of applicant, address, scale used, adjacent street names and north arrow.

17.68.070 Variance Decision Criteria. The Board of Adjustment shall evaluate applications for variances for conformance with all of the following criteria:

- A. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties both in the vicinity and the zoning district where the subject property is located.
- B. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with use rights and privileges allowed to other properties in both the vicinity and the zoning district where the subject property is located.
- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in both the vicinity and in the zoning district where the subject property is located.
- D. The special circumstances of the subject property make the strict enforcements of the ordinance of the zoning regulations an unnecessary hardship to the property owner or lessee.
- E. The variance is the minimum necessary to fulfill the purpose of the variance and the need of the applicant.
- F. The variance is consistent with the purpose and intent of the zoning regulations.

Consideration and Appeals. The Board of Adjustment shall conduct a public hearing and shall render a decision within thirty-five (35) days of the initial hearing provided that the decision may be postponed further with the written consent of the applicant. A letter indicating the decision and any conditions shall be mailed to the applicant. The decision of the Board of Adjustment shall be final unless, within thirty (30) days from the date of the decision, a writ of review is filed with the Superior Court. The filing of such writ shall stay the decision until such time as the writ is adjudicated or withdrawn.

Chapter 17.68

CONDITIONAL USE PERMITS AND VARIANCES

Sections:

- 17.68.010** Scope.
- 17.68.020** Who may apply.
- 17.68.030** Submittal requirements.
- 17.68.040** Washington State Environmental Policy Act review.
- 17.68.050** Conditional use permit and variance review procedure.
- 17.68.060** Conditional use permit decision criteria.
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- 17.68.080** Limitation on authority to grant variances.
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- 17.68.130** Time limitation on conditional use permits and variances.
- 17.68.140** Expiration of conditional use permit.
- 17.68.150** Performance bond required.
- 17.68.160** Transfer of a conditional use permit or variance.
- 17.68.170** Expansion of a conditional use.
- 17.68.180** Revocation or modification of a conditional use permit or variance.

17.68.010 Scope. This chapter establishes the procedure and criteria utilized in processing applications for conditional use permits and variances. (Prior code § 11.022.010)

17.68.020 Who may apply. The property owner or a lessee may apply for a conditional use permit or a variance. (Prior code § 11.022.020)

17.68.030 Submittal requirements. The department shall specify the application forms and submittal requirements including the type, detail and number of copies for a conditional use permit and variance to be deemed complete and to be accepted for filing. (Prior code § 11.022.030)

17.68.040 Washington State Environmental Policy Act review. The Washington State Environmental Policy Act (SEPA) may apply to certain actions taken under this chapter. See Title 14 for procedures. (Prior code § 11.022.040)

17.68.050 Conditional use permit and variance review procedure.

- A. The applicant shall submit an application and any required fees to the department.
 - 1. The department shall review the application and determine if it is complete. The application shall not be deemed filed until the department determines the application is complete and all required fees are paid.

2. The department may establish deadlines for applications. Deadlines shall not be established more than thirty (30) days before board of adjustment meeting dates.
 3. The board of adjustment may limit the number of applications to be considered at a meeting as part of the board's rules of procedure.
- B. Within five working days of the filing of the application, the department shall provide a copy of the application to the SEPA responsible official for threshold review.
- C. After a SEPA exemption, SEPA determination of nonsignificance, or SEPA final environmental impact statement has been issued for an application; the department shall schedule a public hearing for the next board of adjustment meeting where the application can be accommodated and notice provided to the public.
- D. The board of adjustment shall conduct a public hearing on the application. The public hearing shall be conducted as provided in Section 17.68.100. At the hearing, members of the board of adjustment may request such additional information as is reasonably necessary to evaluate the application.
- E. After the public hearing has concluded, the board of adjustment shall decide the application.
1. The decision may be made at the same public meeting as the public hearing or at another public meeting. The board of adjustment shall vote on the application within thirty-five (35) days of the initial public hearing date unless the applicant and any adverse parties agree in writing to an extension of time.
 2. Decisions on applications for conditional use permits shall be based on the decision criteria in Section 17.68.060. Decisions on applications for variances shall be based on the decision criteria in Section 17.68.070 and the limitation on the authority to grant variances in Section 17.68.080.
 3. The board of adjustment may condition or modify the proposal.
 4. If the board of adjustment considers placing modifications on an application to such an extent that it results in a proposal dissimilar from the description of the proposal contained in the hearing notice, the board of adjustment shall hold a new hearing on the modified proposal before approving the application. Notice of this hearing shall be provided as required by Section 17.68.090.
 5. The board of adjustment shall adopt findings of fact and conclusions, which support the decision and any required conditions.
- F. The decision of the board of adjustment and the findings of fact and conclusions shall be reduced to writing and mailed to the applicant by the department within seven days of the date of the decision.
- G. The decision of the board of adjustment on the application is the final decision of the city and shall not be reconsidered except as a new application.
- H. The board of adjustment decision shall not be reconsidered, except as a new application. See Section 17.68.110 for time limits for filing new applications.
- I. The decision of the board of adjustment on the application may be appealed to the superior court as provided in Section 17.68.120.
- J. The applicant or any other party authorized to conduct activities or uses by the decision of the board of adjustment, may commence or obtain additional required

development permits seven days after the approval of the application. Activity commenced before the expiration of the full appeal period provided in Section 17.68.120 is at the sole risk of the applicant or other party. (Prior code § 11.022.050)

17.68.060 Conditional use permit decision criteria.

- A. The board of adjustment shall evaluate applications for conditional use permits, excepting for those requesting restoration of destroyed nonconforming uses, for conformance with all of the following criteria:
 - 1. The proposed use is compatible with existing and potential uses in the general area;
 - 2. The proposed use will be served by adequate public facilities, including streets, fire protection, water, storm water and sanitary sewer;
 - 3. The proposed use is in accordance with the comprehensive development plan;
 - 4. The proposed use complies with the requirements of the zoning district where it will be located. A conditional use permit shall not be used to reduce the requirements of the zoning district in which the use is to locate;
 - 5. The conditional use permit complies with all other applicable criteria and standards of the Aberdeen Municipal Code.
- B. The board of adjustment shall evaluate applications for conditional use permits involving restoration of destroyed nonconforming uses for conformance with all of the following criteria:
 - 1. The use bears a substantial relationship to the public health, safety or welfare;
 - 2. The use has value for the community as a whole;
 - 3. Relocating the use is either not possible or would create a hardship beyond the purchase and development of real property and the construction of improvements;
 - 4. The use is compatible with existing and potential uses in the general area;
 - 5. The design and layout of any structure(s) or use(s) is harmonious and appropriate in design, character and appearance with the existing character and quality of development in the immediate vicinity of the subject property, including the physical characteristics of the subject property;
 - 6. Adequate public facilities, including streets, fire protection, water, storm water and sanitary sewer, are available to service the use;
 - 7. There will not be an increase in the nonconformity of the use above the level existing at the time the use was destroyed;
 - 8. A conditional use permit shall not be used to further reduce the requirements of the zoning district where the use is located beyond that which existed at the time the use was destroyed;
 - 9. The conditional use permit complies with all other provisions of the Aberdeen Municipal Code. (Prior code § 11.022.060)

17.68.070 Variance decision criteria. The board of adjustment shall evaluate applications for variances for conformance with all of the following criteria:

- A. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties both in the vicinity and the zoning district where the subject property is located.
- B. The variance is necessary because of special circumstances relating to the size, shape topography, location or surroundings of the subject property to provide it with use rights and privileges allowed to other properties in both the vicinity and the zoning district where the subject property is located.
- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in both the vicinity and in the zoning district where the subject property is located.
- D. The special circumstances of the subject property make the strict enforcement of the ordinance of the zoning regulations an unnecessary hardship to the property owner or lessee.
- E. The variance is the minimum necessary to fulfill the purpose of the variance and the need of the applicant.
- F. The variance is consistent with the purpose and intent of the zoning regulations. (Prior code § 11.022.070)

17.68.080 Limitation on authority to grant variance. The board of adjustment shall not grant a variance for the following purposes:

- A. To allow a use other than a use specifically listed as a permitted use, conditional use or special use in the zoning district where the subject property is located. Variances shall not be approved to allow an unlisted or unclassified use in any zoning district;
- B. Any provisions within the zoning regulations that specifically exclude the application of a variance;
- C. Any administrative or procedural provision of the zoning regulations. (Prior code § 11.022.080)

17.68.090 Public hearing notice.

- A. The department shall prepare notice for all public hearings and include the following information:
 - 1. The name of the applicant and, if applicable, the project name;
 - 2. The street address of the subject property or a description of the property in non-legal terms sufficient to identify the location;
 - 3. For those notices which will be mailed, a vicinity map indicating the location of the subject property;
 - 4. A brief description of the proposal and any provision of the zoning regulations for which an application for a variance has been made;
 - 5. The deadline for comment;
 - 6. The date, time, and place of the public hearing;
 - 7. The right for any person to participate in the public hearing per Section 17.68.100;
 - 8. Appeals of actions taken by the board of adjustment must be made within thirty (30) days of the date of an application as provided in Section 17.68.120.
- B. The department shall provide notice at least ten days prior to a scheduled hearing.

- C. The department shall provide notice for all public hearings in the following manner:
1. Publishing notice of the public hearing in a newspaper of general circulation within the department;
 2. Mailing notice of the public hearing to the applicant, the property owner, and each person identified by the real property records of the Grays Harbor County Assessor as the owner of real property within the following distances either from any boundary of the subject property or any contiguous property in the applicant's ownership: three hundred (300) feet for conditional use permits and one hundred (100) feet for variances. Failure to receive a properly mailed notice shall not affect the validity of any testimony or the legality of any action taken;
 3. Posting the subject property with at least one notice visible from a public street. (Prior code § 11.022.090)

17.68.100 Conduct of public hearings.

- A. Any person may participate in the public hearing by making an oral presentation or by submitting written comments to the department before the public hearing. The department shall transmit all written comments received before the public hearing to the board of adjustment no later than the public hearing.
- B. An electronic sound recording of each hearing before the board of adjustment shall be made and retained for at least one year after the date of such hearing.
- C. All documentary evidence presented at a hearing, as well as all other types of physical evidence, shall be made a part of the record of the proceedings and shall be kept by the department.
- D. The board of adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the decision is reached. No further notice of a continued hearing is required unless a period of six weeks or more elapses between hearing dates.
- E. The board of adjustment may place reasonable and equitable limitations on testimony, the presentation of evidence and arguments, and questions so the matter at issue may be heard and decided without undue delay. (Prior code § 11.022.100)

17.68.110 Limitation on refilling applications. After a final decision denying an application, the Department shall not accept any application for substantially the same proposal for one year from the date of denial. (Prior code § 11.022.110)

17.68.120 Appeal of board of adjustment decision to superior court. Any person may appeal the decision of the board of adjustment to superior court no more than thirty (30) calendar days following the date of decision. Failure to appeal within the specified period bars any further appeal process. (Prior code § 11.022.120)

17.68.130 Time limitation on conditional use permits and variances. A conditional use permit or variance becomes null and void if not exercised within the time limit specified or, if no time limit is specified, within three years of the date of approval by the board of adjustment or the date of the final resolution of any appeals, whichever is later. (Prior code § 11.022.130)

17.68.140 Expiration of conditional use permit. A conditional use permit shall become null and void if the use or activity authorized by the permit has been abandoned or discontinued for a period of one year or more. (Prior code § 11.02.140)

17.68.150 Performance bond required. The board of adjustment may require a performance bond as provided in Section 17.96.140 as a condition of approval for a conditional use permit to ensure conformance with its decision. (Prior code § 11.022.150)

17.68.160 Transfer of a conditional use permit or variance. An approved conditional use permit or variance may be transferred from the original applicant to any successors in interest to the applicant for the property for which the conditional use permit or variance was approved; provided, that all of the conditions and requirements of the approved permit or variance shall continue in effect as long as the use is pursued. (Prior code § 11.022.160)

17.68.170 Expansion of a conditional use. A conditional use shall not be extended, expanded or intensified beyond the limits allowed in the approved permit unless a new permit is approved in compliance with this chapter. (Prior code § 11.022.170)

17.68.180 Revocation or modification of a conditional use permit or variance.

- A. The board of adjustment shall have the power to revoke or modify an approved conditional use permit or variance if the board finds that one or more of the following criteria are met:
 - 1. The approval was obtained by fraud;
 - 2. The permit or variance is being exercised contrary to the terms or conditions of approval or in violation of law;
 - 3. The use or activity for which approval was granted is being exercised so as to be detrimental to the public health, safety or welfare.
- B. The board of adjustment may initiate the revocation or modification of a permit or variance if the board determines there is sufficient cause by calling a public hearing on the issue. Any aggrieved individual(s) may request in writing that the board initiate revocation of a conditional use permit or variance. Notice for such a hearing shall be provided as required by Section 17.68.090.
- C. The board of adjustment shall hold a public hearing before deciding whether to revoke or add conditions to the permit or variance. The public hearing shall be conducted as provided in Section 17.68.100. At the hearing, members of the board of adjustment may request such additional information as is reasonably necessary to evaluate whether the permit or variance should be revoked.
- D. After the public hearing has concluded, the board of adjustment shall decide whether to revoke or add conditions to the permit or variance. The decision may be made at the same public meeting as the public hearing or at another public meeting. The board of adjustment shall vote on the revocation within thirty (30) days of the initial public hearing date unless the applicant and any adverse parties agree in writing to an extension of time. The decision shall be based on the decision criteria in Sections 17.68.060 and 17.68.070.
- E. If the board of adjustment revokes the permit or variance, the board may require restoration or reclamation of the property and set time limits for their completion.
- F. The board of adjustment shall adopt findings of fact and conclusions which support the decision and any required conditions.

- G. The decision of the board of adjustment and the findings of fact and conclusions shall be reduced to writing and mailed to the permit holder and property owner by the department within seven days of the date of the decision.
- H. The decision of the board of adjustment on the revocation is the final decision of the city and shall not be reconsidered, except as a new application. See Section 17.68.110 for time limits for filing new applications.
- I. The decision of the board of adjustment on the revocation may be appealed to the superior court as provided in Section 17.68.120.
- J. If the board of adjustment revokes a conditional use permit or variance, all activity shall immediately cease unless the board grants a period of time to complete the activity and reclaim the site or a court authorizes continued operation during an appeal. (Prior code § 11.022.180)