

Section 2301—Purpose:

This Chapter, found to be consistent with the terms of the Act, is provided to allow any person or entity desiring a waiver or modification of the requirements of this Ordinance, as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest to apply to the applicable appeal authority for a variance from the terms of this Ordinance.

Section 2302—Authority:

The BOA is hereby identified as the applicable appeal authority authorized to approve, approve with requirements, or deny all Applications for a Variance.

Section 2303—Initiation:

All requests for a variance shall be initiated by filing a Variance Application, in the Office of the City Recorder. A property owner may present a Variance Application for review and decision by the BOA. An agent of the property owner, or a lessee of the property, may present a Variance Application to the BOA for review and decision, provided such Application is accompanied by a property owner affidavit of authorization.

Section 2304—Application Requirements – Determination of Application Completeness Required:

All Variance Applications shall comply with all requirements of this Chapter and this Ordinance, and all other applicable Land Use Ordinance and requirements. All Variance Applications shall be determined complete by the City Recorder, as provided by Section 1206, herein. For Variance Applications determined to be incomplete, the City Recorder shall comply with the requirements of Section 1207, herein.

Section 2305—Variance Application Requirements:

All Variance Applications shall include and provide the following information:

1. A complete Variance Application, available from the Office of the Zoning Administrator.

2. **Variance Application Fees.** The Variance Application shall include the payment of all Variance Application fees, as established by the Council.

Other information, as determined by the Applicant, necessary to clearly establish the need for the variance requested.

Section 2306—Burden on Applicant:

As required by the Act, the Applicant for a variance shall bear the burden of proving that all the conditions justifying a variance have been met.

Section 2307—Review and Approval Procedures:

The procedures for the review of a Variance Application are identified by Figure 23-1, herein.

Section 2308— Approval Standards for a Variance Application by the BOA:

The BOA may grant a Variance Application only if:

1. Literal enforcement of this Ordinance would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of this Ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same Zoning District.
 - 1.1. Granting the Variance Application is essential to the enjoyment of a substantial property right possessed by other property in the same Zoning District.
 - 1.2. The variance will not substantially affect the Richfield City General Plan and will not be contrary to the public interest; and
 - 1.3. The spirit of this Ordinance is observed and substantial justice done.

Section 2309—Required Findings for Approval of a Variance Application:

1. In determining whether or not enforcement of this Ordinance would cause an unreasonable hardship, as required by Section 2308(1), the BOA shall not find an unreasonable hardship unless the alleged hardship:
 - 1.1. Is located on, or associated with the property for which the variance is sought;
and

- 1.2. Comes from circumstances peculiar to the property, and not from conditions that are general to the neighborhood.
2. In determining whether or not enforcement of this Ordinance would cause an unreasonable hardship, as required by this Section 2308(1), the BOA shall not find an unreasonable hardship if the hardship is self-imposed or economic.
3. In determining whether or not there are special circumstances attached to the property, under Section 2308(2), the BOA may find that special circumstances exist only if the special circumstances:
 - 3.1. Relate to the hardship complained of; and
 - 3.2. Deprive the property of privileges granted to other properties in the same Zoning District.

Section 2310—Variance Requirements Authorized:

In granting a Variance Application, the BOA may impose additional requirements on the Applicant that will:

1. Mitigate any harmful effects of the Variance; or
2. Serve the purpose of the standards or requirements that are waived or modified.

Section 2311—Approved Variances to Run with the Land:

As required by the Act, all variances granted by the BOA run with the land.

Section 2312—Use Variance Prohibited:

The BOA shall not approve any Variance Application that would have the effect of authorizing any Use that is not allowed in a Zoning District, or a Use that is prohibited by this Ordinance, as identified by the Tables of Uses.

Section 2313—Effect of Approval of a Variance Application:

The approval of a Variance Application by the BOA shall authorize such variance, subject to any requirements of approval. The approval of a Variance Application shall not be deemed an approval of any other application, permit, or license.

Section 2314—Appeal:

Any person aggrieved by a decision of the BOA regarding a Variance Application may appeal such decision as provided by Chapter 26 herein.

Section 2315—Revocation or Amendment of a Variance Application Approval:

1. A Variance Application approved in accordance with the provisions of this Chapter may be revoked by the BOA if any of the requirements of approval are not met, or if the permit is used to violate any law or ordinance.
2. The Zoning Administrator shall notify the approved Variance holder by certified mail of any violation, or if a violation exists in any requirements of approval. If no attempt to correct the violation is made within ten (10) days after notification, the Variance approval may be revoked by the BOA, if the BOA finds that one (1) or more of the following circumstances exists:
 - 2.1. The approval was obtained in a fraudulent manner.
3. One (1) or more of the requirements of approval have not been met.
4. No Variance Application approval shall be amended. If an amendment to an approved Variance Application is required by the Applicant, a new Variance Application shall be required to be filed in the Office of the Zoning Administrator and approved by the BOA as provided and required by this Chapter.

Section 2316—Expiration:

As provided by the Act, the continuing validity of a Variance Application approval is conditioned upon the Applicant proceeding after approval to implement the approval with reasonable diligence. For the purposes of this Ordinance, and this requirement, the approval of a Variance Application shall be effective for a period of one hundred eighty (180) calendar days, at the end of which time the Applicant shall have proceeded to implement the Variance Application approval. If the Variance Application approval is not commenced within one hundred eighty (180) calendar days from the date of approval by the BOA the variance Application approval shall expire and shall be rendered void.

**Figure 23-1
Variance Application Procedures**

