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## Sec. 112-63. Variance considerations.

- (a) In passing variances for applications, the stormwater management board shall consider all technical evaluations, all relevant factors, all applicable local ordinances and regulations, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity of the ancillary facility;
  - (6) The availability of alternative locations that is for the proposed facility, not subject to flooding or erosion damage;
  - (7) The relationship of the proposed development or improvement plan to the master drainage plans for that area;
  - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;
  - (10) 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, water systems, streets, and bridges; and
  - (11) Any other relevant facts that pertain to compliance with city ordinances and regulations or are mandated by federal or state laws, rules, or regulations.
- (b) Upon consideration of the factors listed in subsection (a) of this section, and the objectives of these regulations, the stormwater management board may attach such conditions to the granting of variances as it deems necessary to further the objectives of these regulations.
- (c) Conditions for variances.
- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building;
  - (2) Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship; and
    - c. A determination that the granting of a variance will not result in any of the following:
      1. Increased flood heights or an increase in expected flood velocities;
      2. Additional threats to public safety or extraordinary public expense;
      3. Create a public or private nuisance;
      4. Cause fraud on or victimization of the public; or
      5. Conflict with existing federal or state laws, rules, and regulations; and

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6. Will not result in any adverse impact upon other lands;
- (3) Variances may not be issued for developments inside a regulatory floodway unless
    - a. all requirements of 44 CFR §65.12 are first met; or
    - b. the following requirements are met:
      1. a No-Rise Certificate signed and sealed by a Professional Engineer licensed to practice in the State of Arkansas is submitted to document that no increase in the base flood elevation would result from granting a variance for the proposed development.
      2. protective measures are employed to minimize damages during flooding events; and
      3. the variance does not result in any adverse impact to other lands.
  - (4) The secretary of the stormwater management board shall maintain the records of all appeal actions, and;
  - (5) The city floodplain administrator shall report any variances to the Federal Emergency Management Agency upon request.
- (d) Variances may be issued for;
    - a. the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places without regard to the procedures set forth in this section, except for subsections (c)(1), (4) and (5) of this section, and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation;
    - b. the new construction of, or substantial improvement to, a structure on a lot of 1/2 acre or less in size that is surrounded by contiguous lots with existing structures constructed below the base flood elevation; and
    - c. the new construction of, substantial improvement to, or other development necessary to conduct a functionally dependent use, provided that:
      1. the criteria outlined in subsections (c) (3) and (d) and Sec. 112-62 are met, and
      2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. No. 08:099, § 2(7.4), 12-18-2008)