

Variance Test

City of Charleston

The following is excerpted from Section 54-924 of the City of Charleston Zoning Ordinance. This test is based on S.C. Code Ann. § 6-29-800.

A variance **may** be granted by the Board of Zoning Appeals in an individual case of unnecessary hardship if the Board makes the following findings:

- a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. these conditions do not generally apply to other property in the vicinity;
- c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

However, an affirmative vote of two-thirds (2/3) of the Board members present and voting shall be required before a variance may be granted for a use of land, a building or a structure that is prohibited in a given district (“Use Variance”) by ordinance or resolution; provided, however, that City Council may overrule the decision of the Board pursuant to S.C. Code Ann. § 6-29-800 and such other laws as may apply. For a Use Variance that has been granted by the Board, no vested right shall attach thereto and no permit shall be issued for 15 days from the date of the granting of a Use Variance by the Board to determine whether City Council intends to consider overruling such Use Variance. If the Mayor or any member of City Council delivers notice to the Zoning Administrator of intent to consider overruling a Use Variance within 15 days of the granting of a Use Variance by the Board, then the Board’s decision shall be held in abeyance, no vested right shall attach to the Use Variance granted by the Board and no permit shall be issued until City Council has determined whether to overrule the Board’s granting of the Use Variance. No person with a substantial interest in the Use Variance granted by the Board shall have a right to appeal such decision to City Council and may only appeal such decision to Circuit Court for errors of law pursuant to S.C. Code Ann. § 6-29-820 and § 54-930 of the Zoning Ordinance of the City of Charleston and such other provisions as may apply. Because S.C. Code Ann. § 6-29-820 and § 54-930 of the Zoning Ordinance of the City of Charleston establish the time limit for appeals of decisions of the Board, any person with a substantial interest in the granting of a Use Variance by the Board shall file an appeal with the Circuit court within 30 days after the decision of the Board is mailed and shall deliver a

copy of such appeal to the City. If an appeal is filed and a timely notice of intent to consider overruling a Use Variance granted by the Board is delivered to the Zoning Administrator by the Mayor or a member of City Council in accordance with this section, such appeal shall not divest City Council of its right to consider overruling the granting of a Use Variance by the Board and City Council may proceed to hear the matter of whether to overrule the Use Variance pending appeal to Circuit Court. City Council shall consider the matter of overruling the granting of a use variance at its next regularly scheduled meeting after the decision of the Board is mailed or as soon thereafter as may be practicable. City Council may defer or continue its deliberations on the matter, but shall make a final decision on the appeal within three (3) regularly scheduled City Council meetings after it is first considered. In the event City Council does not consider the matter at its regularly scheduled meeting after the decision of the Board is mailed, City Council shall be divested of its right to consider overruling the granting of such Use Variance by the Board.