

Variance Process for the Board of Adjustment (BOA)



February 16, 2022

Authority of the Board of Adjustments

- A variance is the right to use or to build on land in a way prohibited by strict application of a zoning ordinance.
 - Intended for owners uniquely and severely impacted by the zoning ordinance
- Two types:
 - Use (prohibited per Sec. 62-253(b))
 - Nonuse/Area (permitted per Sec. 62-251) Sec. 62-253(b)
 - Setbacks
 - Lot width
 - Lot size
- The applicant must demonstrate an “unnecessary and undue hardship...” (Sec. 62-253(a))

Hardship

- A hardship means the owner's land is uniquely and unnecessarily burdened
 - When a landowner “cannot yield a reasonable use and/or [economic] return under the existing land development regulations.” (Sec. 62-253(a))
 - Personal circumstances are not cause for a variance (i.e. simply wanting a bigger house) (Sec. 62-243.(a))
- The burden is on the applicant to demonstrate their hardship
- Planners work with applicants to help them understand what does and does not constitute a hardship
 - Applicants fill out a “variance hardship worksheet”

Intake

- Applicants discover they will need a variance in these situations, among others:
 - Before submitting a permit when they realize they cannot do what they wish due to the lot's irregular shape or configuration
 - After submitting a new building permit and discovering their lot does not meet the zoning requirements
 - After submitting a foundation survey where an error was made
 - When trying to sell the property
- An administrative waiver can be used for increases of not greater than 10% (Sec. 62-1153. & 62-1154.)
 - Requires the signature of the neighbor(s) abutting the property receiving a waiver
 - Does not require a public hearing

Prerequisites to Granting of Variance

- “That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the applicable zoning classification.” (Sec. 62-253(a)(1))
 - A variance is not the appropriate remedy to a problem impacting the entire neighborhood. It must be peculiar to the property.
- “That the special conditions and circumstances do not result from the actions of the applicant.” (Sec. 62-253(a)(2))
 - For example, an applicant puts an accessory structure on their property line despite having room elsewhere is not grounds for a variance
- “That granting the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification.” (Sec. 62-253(a)(3))

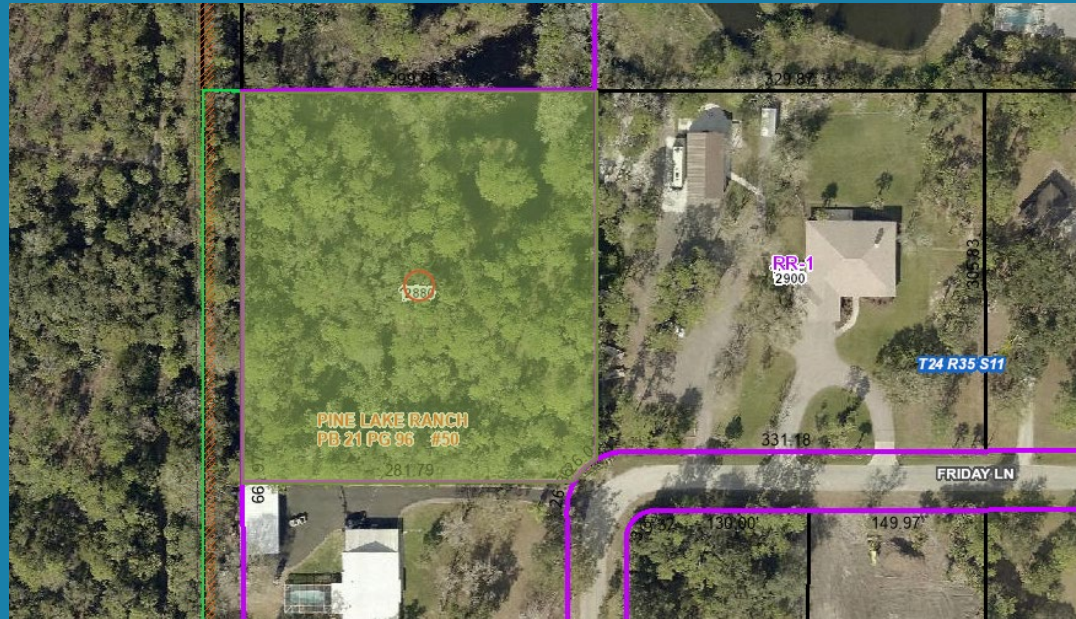
Prerequisites to Granting of Variance

- “That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification under the provisions of this chapter and will constitute unnecessary and undue hardship on the applicant.” (Sec. 62-253(a)(4))
- “That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.” (Sec. 62-253(a)(5))
- “That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such a variance will not be injurious to the area involved or otherwise detrimental to the public welfare.” (Sec. 62-253(a)(6))

Common Reasons to Deny a Variance

- The unnecessary hardship is general to the neighborhood or community rather than peculiar to the property.
- The issue was self-created (i.e., dividing a lot into two substandard lots without checking the zoning regulations).
- The only reason given for the variance is personal circumstances (i.e., to build a bigger house).
- The variance requested is excessive.

Examples



20PZ00061

- Requested 64.5 feet from the 125 feet minimum lot width in RR-1
 - 52% increase
- Lot was split by previous owner, creating a nonconforming lot that needs to be legitimized

Examples



20PZ00063

- Requested an accessory structure of 2,489 sq. ft. over the 891 sq. ft. permitted by Sec. 62-2100.5(d) for a total of 3,380 sq. ft.
 - 279% increase

Questions!

