

## Chapter 20.20

## APPEALS, VARIANCES, INTERPRETATIONS

Sections:

- 20.20.010 Appeals of Community and Economic Development Director or Design Review Board Decisions.
- 20.20.020 Appeals of Hearing Examiner Decisions.
- 20.20.030 Variances.
- 20.20.040 Interpretations.
- 20.20.050 Requests to be Heard Expeditiously.
- 20.20.054 Decisions of the Community and Economic Development Director, Hearing Examiner, Design Review Board, Planning Commission, or City Council.
- 20.20.060 Burden of Proof in Appeals and Variances.
- 20.20.070 Community and Economic Development Director, and Hearing Examiner or City Council Action on Appeals and Variances.

20.20.010 Appeals of Community and Economic Development Director or Design Review Board Decisions.

- (a) All actions of the Community and Economic Development Director or Design Review Board are appealable to the Hearing Examiner. Any aggrieved party of record may file an appeal. An appeal shall be considered filed when a written notice of appeal, specifying the grounds and arguments therefore, is delivered to the Department of Community Development and the appeal fee as set by resolution is paid. The date and time of filing shall be entered on the notice by the Permit Assistance Center staff.
- (b) An appeal must be filed within fourteen days after the date of the decision or order appealed from. The City shall extend the appeal period for an additional seven days if a Determination of Nonsignificance with no prior public comment period has been issued on the project.
- (c) Whenever an appeal is filed, the Community and Economic Development Director shall forthwith transmit to the appropriate appeal body all the papers constituting the record relating to the action appealed from. The hearing body shall schedule and hold a closed record appeal hearing within sixty days of the date of filing of the appeal, unless all parties to the appeal agree in writing to extend the time period.
- (d) An appeal stays all actions by the City seeking enforcement of or compliance with the order or decision appealed from, unless the Community and Economic Development Director certifies to the appeal body that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the appeal body or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Community and Economic Development Director.
- (e) The appeal body may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the appeal body shall have all the powers of the officer from whom the appeal is taken.
- (f) An appeal decision by the City Council is considered the final decision of the City.

### 20.20.020 Appeals of Hearing Examiner Decisions.

- (a) Appeals from the final decision of the Hearing Examiner, or other city board or body involving the City's Land Use Code and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, within twenty one days of the date the decision or action became final, unless another applicable appeal process or time period is established by state law or local ordinance.
- (b) Upon motion for reconsideration, the date of the decision is the date of entry of the decision on the reconsideration motion by the Hearing Examiner and not the original decision date by the City.
- (c) Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by law within the applicable time period. This requirement is jurisdictional.
- (d) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The record of the proceedings shall be prepared by the City or such qualified person as it selects. Prior to the preparation of any records the appellant shall post with the City Department of Community Development an advance fee deposit in the amount specified by the City's planning division. Any overage will be promptly returned to the appellant.

### 20.20.030 Variances.

- (a) A development proposal may vary only from the development standards of this code or any administratively adopted guidelines. Variances may not be granted to allow a use in a zone not permitted pursuant to [§20.40 \(Permissible Uses\)](#) or to modify decision-making procedures or criteria.
- (b) An application for a variance shall be submitted to the City by filing a copy of the application with the planning department. Applications for variances alone or in connection with a zoning or special use permit shall be processed concurrently with the other necessary permit and in the same manner as applications for special use permits in conformity with the provisions of [§20.16 \(Permits and Land Division Approval\)](#), specifically (but not exclusively) the noticing requirements of [§20.16.230 \(Notice of Application Filed\)](#) and [§20.16.225 Special Use Permits and Conditional Use Permits](#). Applications for variances in connection with a conditional use permit shall be handled concurrently with the conditional use permit and in conformity with the provisions of conditional use permit processing of [§20.16](#).
- (c) A variance may be granted by the Community and Economic Development Director or Hearing Examiner, whichever is the appropriate permit-issuing authority per Subsection (b), if it is concluded that strict enforcement of the code would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the code will be observed, public safety and welfare secured, and substantial justice done. These conclusions may be reached if it is found that:
  - (1) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and
  - (2) That such 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 permitted to other properties in the vicinity and in the zone in which

- the subject property is located; and
- (3) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.
  - (d) In granting variances, the permit-issuing authority may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
  - (e) A variance may be issued for an indefinite duration or for a specified duration only.
  - (f) Prior to issuance, the nature of the variance and any conditions attached to it shall be entered on the face of the permit, or the permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Title.

#### 20.20.040 Interpretations.

- (a) The Community and Economic Development Director is authorized to interpret the zoning map and to pass judgment upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Community and Economic Development Director, they shall be handled as provided in [§20.20.010 \(Appeals of Community and Economic Development Director or Design Review Board Decisions\)](#).
- (b) An application for a map interpretation shall be submitted to the Community and Economic Development Director by filing a copy of the application with the planning department. The application shall contain sufficient information to enable the Community and Economic Development Director to make the necessary interpretation.
- (c) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
  - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines.
  - (2) Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries.
  - (3) Boundaries indicated as following shorelines shall be construed to follow the mean high-water mark of such shorelines, and in the event of change in the shoreline shall be construed as following the mean high-water mark of such shorelines.
  - (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map. Each portion of a property split zoned shall be governed by [§ 20.36.105 \(Lots Divided by District Lines\)](#).
  - (5) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.
- (d) Interpretations of the location of floodway and floodplain boundary lines may be made by the Community and Economic Development Director as provided in [§20.64.120 \(Location of Boundaries of Floodplain and Floodway Districts\)](#).

#### 20.20.050 Requests to be Heard Expeditiously.

As provided in [§20.20.070 Community and Economic Development Director, and Hearing Examiner or City Council Action on Appeals and Variances](#)), all appeals and variance requests shall be heard and decided as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with [§20.24](#) (Hearing and Pre-Hearing Procedures for Appeals and Applications), and obtain the necessary information to make sound decisions.

#### 20.20.054 Decisions of the Community and Economic Development Director, Hearing Examiner, Design Review Board, Planning Commission, or City Council.

- (a) Any final decision of a permit-issuing authority or appeal body shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the Comprehensive Plan and development regulations. Each final decision, unless the applicant and the decision-making authority mutually agree to a longer period in writing, shall be rendered within fifteen days following conclusion of all testimony and hearings.
- (b) The Community and Economic Development Director shall issue decisions of the Community and Economic Development Director, Design Review Board, or City Council based on the record. The Hearing Examiner shall issue his decisions by providing a signed copy to the Community and Economic Development Director, who shall then issue a Notice of Decision as per [§20.16.275 \(Notice of Decision\)](#).

#### 20.20.060 Burden of Proof in Appeals and Variances.

- (a) When an appeal is taken to the Hearing Examiner in accordance with [§20.20.010 \(Appeals of Community and Economic Development Director or Design Review Board Decisions\)](#), the appellant shall have the burden of presenting to the Hearing Examiner sufficient evidence and argument to demonstrate the appellant is entitled to relief. The hearing examiner shall have the right to control the presentation of evidence and witnesses, including who may present testimony or argument in an appeal hearing.
- (b) The burden of presenting evidence sufficient to allow the decision-making authority to reach the conclusions set forth in [§20.20.030\(c\) \(Variances\)](#), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

#### 20.20.070 Community and Economic Development Director, and Hearing Examiner or City Council Action on Appeals and Variances.

- (a) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made, then a finding to uphold the decision appealed from shall be in order.
- (b) Before granting a variance, the permit-issuing authority must make a separate finding on each of the three required findings stated in [§20.20.030\(c\)](#). Insofar as practicable, an affirmative finding on each of the requirements set forth in [§20.20.030\(c\)](#) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (c) A variance may be denied on the basis that any one or more of the three criteria set forth in [§20.20.030\(c\)](#) are not satisfied or that the application is incomplete. Insofar as practicable, a denial shall include a statement of the specific reasons or findings of fact that support it.