

## Zoning Ordinance

### § 906 MODIFICATION.

(A) The Zoning Enforcement Officer is authorized to grant modification permits. The maximum percent allowed for a modification is 25% of the dimensional requirements specified in the zoning ordinance. Modifications that are 15% or less of ~~the any~~ dimensional requirements specified in the zoning ordinance shall be permitted.

~~(B) A modification does not permit moving of lot lines.~~

(C) Within ten days of the receipt of a request for a modification, the Zoning Enforcement Officer shall make a decision as to the suitability of the requested modification based on the following determinations:

(1) The modification requested is ~~reasonably necessary for the full enjoyment of the permitted use minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted;~~

(2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

(3) The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and

(4) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands.

(D) Upon an affirmative determination, in the case of a modification of 5% or less, the Zoning Enforcement Officer shall have the authority to issue a permit approving the modification, without any public notice requirements. In the case of a modification of greater than 5%, the Zoning Enforcement Officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection ~~by anyone who is entitled to notice under this section~~ is received within 14 days of public notice. If written objection is received within 14 days, the request for a modification shall be scheduled for the next available hearing before the Zoning Board of Review on application for a dimensional variance following the standard procedures for variances, including notice requirements provided for under this chapter. If no written objections are received within 14 days, the Zoning Enforcement Officer shall grant the modification. The Zoning Enforcement Officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and

purposes of the zoning ordinance. The Zoning Enforcement Officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

(E) Neighborhood character-based modifications (“NCBM”). The zoning enforcement officer is authorized to grant NCBM on any parcel with a public water and sewer connection, and for purposes of residential use, from the literal dimensional requirements of the zoning ordinance in the instance of the construction, alteration, creation or structural modification of a dwelling unit, provided that:

(1) Such modifications shall only be granted for dimensional relief from frontage, lot width, and lot depth, up to the average dimensions of the comparable existing built environment;

(2) The average dimensions of the comparable existing built environment shall be calculated as follows:

\_\_\_\_\_ (i) Comparable existing parcels shall mean all parcels that are:

\_\_\_\_\_ (A) Within two hundred feet (200') of the subject property; and

(B) In the same base zone; and

(C) Used for residential purposes.

(ii) The average dimensions shall be confirmed by a professional land surveyor.

(iii) The average dimensions are to be determined without any additional review of zoning or building code analysis of the legality of the existing dimensions of the comparable existing parcels.

(3) Within ten (10) days of the receipt of a request for NCBM, the zoning enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

(i) The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and

(ii) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands; and

(iii) The NCBM does not violate any provisions regarding separation included in the state building or fire code;

(4) Upon an affirmative determination, in the case of an NCBM modification of equal to or less than thirty percent (30%) of the requirements of the zoning district, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements. In the case of an NCBM modification of greater than thirty percent (30%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the NCBM modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received within fourteen (14) days of the public notice. If written objection is received from any party entitled to notice under this section within fourteen (14) days, the request for a modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for such variances, including notice requirements provided for under this chapter. If no written objections are received within fourteen (14) days, the zoning enforcement officer shall grant the modification. The zoning enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.