

#### **Sec. 4-21. Variances.**

(a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the board for a variance from rules or regulations. Each applicant to the board for variance shall pay a fee of one-hundred dollars (\$100.00) to cover the cost of handling the application, no part of which is returnable. The board may grant such variance if it finds that:

(1) The emissions occurring or proposed to occur do not endanger or are not likely to endanger human health or safety; and

(2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice by publication in a newspaper of general circulation and until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof may be granted within the requirements of subsection (a) and for the time periods and under conditions consistent with the reasons therefor[sic] and with the following limitations:

(1) If the variance is granted on the ground that there is not practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available and subject to the taking of any substitute or alternate measures that the board may prescribe;

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable;

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of any kind other than provided for in items (1) and (2) of this subsection, it shall be for not more than one (1) year.

(d) Any variance granted pursuant to this section may be renewed on terms and

conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the board on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least thirty (30) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the board shall provide for public notice in a newspaper of general circulation at the expense of the applicant prior the the public hearing upon such application.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by a variance or renewal granted by the board may obtain judicial review thereof by a proceeding in the chancery court. Judicial review of the denial of a variance may be had only on common law writ of certiorari on the ground that the denial is arbitrary or capricious.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 4-20 of this chapter to any person or his property.

(g) Any hearing held under the provisions of this section shall conform with the relevant requirements set out in Section 4-18 of this chapter.

(Code 1968, Sec. 4-19; Ord. No. 6021, Sec. 5, 3-4-69; Ord No. 6221, Sec. 19, 9-29-70; Ord. No. 6502, Secs. 29,30, 10-3-72; Ord. No. 6838, Secs. 22,23, 1-14-75; Ord. No. 7098, Sec. 25, 10-5-76)

THIS IS THE FEDERALLY APPROVED REGULATION AS OF MAY 8, 1990

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**Secs. 4-22 - 4-40. Reserved.**