

CHAPTER 20

VARIANCE PROCEDURES

SECTION 1: VARIANCES

a) In General

Requests for variances from requirements of the Development Code shall generally be considered for those provisions which regulate site development and the requirements applicable to existing development. Requests for variances to permit a use which is not allowed as a permitted use or by special exception within the specific zoning district shall not be considered. In addition, request for variances to permit the nonconforming use of any land or structure, or the continuance of any nonconforming use shall not be considered.

b) Specialized Variance Procedures and Requirements

Specialized variance procedures and requirements in lieu of, or in addition to, the requirements of this Chapter, are outlined in the following locations:

- 1) Chapter 9, "Subdivisions and Plats".

c) Application for All Other Variances

Application for variance shall be made on the appropriate forms provided by the City for that purpose, and shall be accompanied by the appropriate review fee. Variances shall be considered as follows:

- 1) Applications for variance shall be submitted no later than two (2) weeks in advance of the regularly scheduled Planning and Zoning Board meeting in order to be considered at that meeting.
- 2) Applications for variance shall include a legal description of the property, sketch or survey of the property, proof of ownership, and authorization of the owner if represented by an agent or contract purchaser.
- 3) In addition, the applicant shall provide a written statement which explains the conditions and circumstances of the alleged hardship, the proposed action by the applicant should the variance be granted, and the necessity of the action. The written statement shall clearly justify the granting of relief from requirements of the Development Code, and satisfactorily address the review criteria of this Chapter.

d) Notification of Public Hearing

All variance requests shall be considered at public hearings, which shall be noticed as follows:

- 1) Adjoining Owners. The City shall send notice of the proposed variance to the owners of all adjoining properties within two hundred (200) feet of the subject property. Such notice shall include the date, time and place of the public hearing, along with a clear and concise description of the proposed variance.
- 2) Posting of Property. The City shall post every property that is subject of a public hearing with signs notifying the public of the proposed variance, date of public hearing, and the department to contact for further information. Signs shall be placed, at a minimum, along all public road frontages, with a minimum of one (1) sign per five hundred (500) feet along any one (1) frontage.
- 3) Public Advertisement. Notice of public hearing shall be published in a newspaper of general circulation within the City at least two (2) weeks prior to the hearing. Notice shall also be posted in a conspicuous location at City Hall, and may be posted at other public locations at the discretion of the City.

e) Procedure for Public Hearing.

- 1) TRC. The Technical Review Committee will review all applications for compliance with the review criteria and make a recommendation to the Planning and Zoning Board. A recommendation to the Board will consider and specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons for compliance with the criteria specified.
- 2) Planning and Zoning Board Action. The Planning and Zoning Board shall consider and make recommendations to the City Council on every variance request at the public hearings as noticed in subsection (d) above. A decision of the Board to vary the application of any provision of this Code shall specify in what manner such variation or modification is made, the reasons therefore.
- 3) City Council Action. The City Council shall consider the recommendation of the Planning and Zoning Board before taking action on proposed variances.

f) Review Criteria. When reviewing an application for a variance, the Planning and Zoning Board and the City Council shall consider the following requirements and criteria:

- 1) No diminution in value of surrounding properties would be suffered;

- 2) Granting the permit would be of benefit to the public interest;
- 3) Denial of the permit would result in unnecessary hardship to the owner seeking it;
- 4) By granting the permit, substantial justice will be done; and
- 5) The use must not be contrary to the spirit of the ordinance.

The above criteria shall be used to determine the justification for granting of relief from requirements of the Development Code. All variance requests shall demonstrate the application of each criterion to the specific case.

- g) Financial Hardship. Financial disadvantage or inconvenience to the applicant shall not of themselves constitute conclusive evidence of unnecessary and undue hardship and be grounds to justify granting of a variance.
- h) Physical Hardship. Physical hardships such as disabilities of any applicant may be considered grounds to justify granting of a variance at the discretion of the Planning and Zoning Board and the City Council.
- i) Conditions of Approval.
 - 1) Conditions and Safeguards. In granting any variance, the Planning and Zoning Board may recommend and the City Council may prescribe appropriate conditions and safeguards to ensure compliance with the requirements of this Chapter and the Development Code in general. Such conditions may include time limits for initiation of the variance, specific minimum or maximum limits to regular Development Code requirements, or any other conditions reasonably related to the requirements and criteria of this Chapter.
 - 2) Transfer of Variances. Variances run with the property and the use of a variance may be transferred to another party for use on the same property.
 - 3) Expiration of Variance Approval. A variance that has not been utilized within two (2) years of being granted shall not be utilized without a new public hearing in accordance with requirements of this Chapter.