

## §153.075 VARIANCES

1. Purpose. The purpose of this section is to assure that variances may be granted as provided in this section where practical difficulties, unnecessary hardships and results inconsistent with the general purposes of this Ordinance may result from the strict application of certain provisions. This section shall not be used to allow a use that is not permitted by this ordinance for the district in which the land is located. In granting a variance, the City may impose conditions similar to those provided for conditional uses to protect the best interests of the surrounding property, the neighborhood or the city as a whole.
2. Authorization to Grant or Deny Variances. The Planning Commission may authorize variances from the requirements of the Ordinance where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of this Ordinance would cause an undue or particular hardship, except that no variance shall be granted to allow the use of property for purposes not authorized within the district in which the proposed use would be located.

In granting a variance, the City may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and to otherwise achieve the purposes of this Ordinance. The conditions to an authorized variance shall also be a part of the public record on the deed and be a part of the requirements for an issuance of a Zoning Clearance permit.

3. Application. The property owner or his authorized agent may make application for a variance from the provisions of this Ordinance by filing an application, on a form and in a manner prescribed by the City in §153.004, with the Planning Department at least forty days prior to the meeting date the matter is intended to be considered.

Such application shall be accompanied by a legal description of the property, plans and elevations necessary to show the proposed development, a filing fee in the amount established by general resolution of the City Council, a map showing the subject property and surrounding properties and current property owners within two hundred fifty feet of the property subject to such variance application, a statement, plans and supportive evidence that all of the following conditions in subsection 5 below exist.

4. Burden of Proof. In order for the City Planning Commission to grant a variance, all the conditions and circumstances listed in subsections A, B, C and D of subsection 5 must be found to exist. The specific findings by the Planning Commission in granting a variance must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the variance from the provisions of this title. If no evidence is produced concerning any or all of the findings listed in subsections A, B, C and D of subsection 5, the application must be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any variance application.

5. Criteria for Granting a Variance. No variance shall be granted unless it can be shown that ALL of the following conditions exist:
  - A. Exceptional or extraordinary conditions apply to the property that do not apply generally to other properties in the same district or vicinity, which conditions are a result of lot size or shape, topography or other circumstances over which the applicant has no control.
  - B. The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same district or vicinity.
  - C. The authorization of the variance shall not be materially detrimental to the purposes of this Ordinance, be injurious to property in the district or vicinity in which the property is located or be otherwise detrimental to the objectives of any city development plan or policy.
  - D. The variance requested is the minimum variance from the provisions and standards of this Ordinance which will alleviate the hardship.
6. Before a variance is granted, the proposed variance shall be considered by the Planning Commission at a public hearing, or administratively by staff. Notice of said hearing or administrative action shall be provided as per §153.004 of this Ordinance.
7. Action of the Planning Commission. The City Planning Commission shall make its findings and conclusions available in writing within 10 days after the decision on the proposed variance. Upon the filing of said order with the City Recorder, the order shall be in full force and effect. An order denying the variance shall be entered and filed in a like manner, with the necessary findings, where the planning commission, based on the standards specified herein, determines that the variance should not be granted.
  - A. The Commission, at the time of a public hearing, or staff, in the case of an administrative action, may attach conditions to an authorized variance, which it feels are necessary to protect the public interest and carry out the purpose of this Ordinance.
  - B. The conditions to an authorized variance shall also be part of the public record and be a part of the requirements for an issuance of a building permit. The variance shall not be effective if any such express condition is not fulfilled or is violated or if the activity of the applicant exceeds any express limitation in the variance. It shall be unlawful for any person to cause or permit the use of any property in violation of the express conditions or limitations of any variance granted with respect to such property.
8. Appeal. Appeal of a decision made by the Planning Commission shall be filed and conducted in accordance with §153.076.
9. The following type of variance application can be handled administratively:
  - A. Deviation from the minimum building setback of not more than twenty percent (20%).

- B. Deviation from the building height limitation of not more than ten percent (10%)
- C. Deviation from a residential accessory dwelling living area of not more than five percent (5%).
- D. Expansion of a conditional or nonconforming use by not more than twenty percent (20%) of the gross building volume.

10. Time Limit on and Extension of Approval of a Variance.

- A. Authorization of a variance shall be void after six months if:
  - 1. A building permit has not been issued and substantial construction has not taken place;  
or
  - 2. Construction on the site is a departure from the approved plan.
- B. The City Planner, in the case of an administrative action, or Planning Commission, may, upon written request by the applicant, grant that authorization may be extended for an additional six months; provided, that:
  - 1. No changes are made on the original approved variance;
  - 2. The applicant can show intent of initiating construction on the site within the six month extension period; and
  - 3. There have been no changes to the applicable comprehensive plan policies and Zoning ordinance provisions on which the approval was based.
- C. Notice of the decision regarding the extension shall be provided to the applicant.

11. Effect. No building or zoning permit shall be issued in any case where a variance is required until fourteen days after the decision of the City Planning Commission is filed with the city recorder, and then only in accordance with the terms and conditions of said approval. An appeal from the action of the commission shall automatically stay the issuance of the building or other permit until such appeal has been completed and the council has acted thereon.

12. Time Limitation. In the case where an application is denied by the planning commission, or denied by the City Council on appeal from the planning commission, unless specifically stated to be without prejudice, it shall not be eligible for resubmittal for the period of one year from the date of said denial unless, in the opinion of the planning commission, new evidence is submitted or conditions have changed to an extent that further consideration is warranted.