

ARTICLE 12

VARIANCES

12.010. **PURPOSE.**

The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unnecessary hardships resulting from the size, shape, or dimensions of a site or the location of structures thereon; from geographic, topographic, or other factors listed below. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located.

12.020. **CONDITIONS.**

Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this Section. Guarantees and evidence may be required that such conditions will be and are being complied with.

12.030. **GENERAL CRITERIA.**

Variations to a requirement of this Code, with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, and other quantitative requirements may be granted only if, on the basis of the application, investigation and evidence submitted by the applicant, findings are made based on the four factors listed below. Variations from off-street parking, sign requirements, and Flood Hazard Overlay Zone are not subject to General Criteria (refer to Sections 12.040, 12.050, and 12.055 as applicable)." *(Amended by Ordinance 09-03, 8/3/09)*

- A. The granting authority may grant a variance from the requirements of this chapter, if on the basis of the application, investigation, and the evidence submitted by the applicant, all four (4) of the following expressly written findings are made:
1. The request is necessary to prevent unnecessary hardship; and
 2. Development consistent with the request will not be substantially injurious to the neighborhood in which the property is located; and
 3. The request is necessary to make reasonable use of the property; and
 4. The request is not in conflict with the Comprehensive Plan.

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- B. In evaluating whether a particular request is to be granted, the granting authority shall consider the following, together with any other relevant facts or circumstances.
1. Relevant factors to be considered in determining whether a hardship exists include:
 - a. Physical circumstances related to the property involved;
 - b. Whether a reasonable use, similar to like properties, can be made of the property without the variance;
 - c. Whether the hardship was created by the person requesting the variance;
 - d. The economic impact upon the person requesting the variance if the request is denied.
 2. Relevant factors to be considered in determining whether development consistent with the request is substantially injurious to the neighborhood include:
 - a. The physical impacts such development will have, such as visual, noise, traffic and the increased potential for drainage, erosion and landslide hazards.
 - b. The incremental impacts occurring as a result of the proposed variance.
 3. A determination of whether the standards set forth in Section 12.030(A) are satisfied necessarily involves the balancing of competing and conflicting interests. The considerations listed in Section 12.030(B) (1) & (2) are not standards and are not intended to be an exclusive list of considerations. The considerations are to be used as a guide in the granting authority's deliberations.
 4. Prior variances allowed in the neighborhood shall not be considered by the granting authority in reaching its decision. Each request shall be considered on its own merits.
- C. No variance may be granted which will permit a use not permitted in the applicable zone or which will increase the allowable residential density in any zone with the exception of individual lot size reduction.

12.040. CRITERIA FOR VARIANCE FROM STANDARDS RELATING TO OFF-STREET PARKING AND LOADING FACILITIES.

(Section 12.040 amended by Ordinance 09-03, 8/3/09)

Variances from the requirements of this Code with respect to off-street parking and loading facilities may be authorized as applied for or as modified by the City Planning Commission, if, on the basis of the application, investigation, and the evidence submitted by the applicant, all three (3) of the following expressly written findings are made:

1. That neither present nor anticipated future traffic volumes generated by the use of the site or use of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the requirements of this Code; and
2. That the granting of the variance will not result in the parking or loading of vehicles on public streets in such a manner as to materially interfere with the free flow of traffic on the streets; and
3. That the granting of the variance will not create a safety hazard.

12.050. CRITERIA FOR VARIANCES FROM STANDARDS RELATING TO SIGNS.

(Amended by Ordinance 09-03, 8/3/09)

Variances from sign requirements, refer to Section 8.110. Sign variances are exempt from Sections 12.030 to 12.040.

12.055. CRITERIA FOR VARIANCES FROM STANDARDS RELATING TO FLOOD HAZARD OVERLAY ZONE.

The granting authority may grant a variance from the requirements of the Flood Hazard Overlay Zone Sections, if on the basis of the application, investigation, and the evidence submitted by the applicant, all of the following expressly written findings are made. In addition, the granting authority shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this Code.

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the following items have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.
 - a. The danger that materials may be swept onto other lands to the injury of others;

- b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site; and,
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- 2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.
 - 3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
 - 4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - 5. Variances shall only be granted when all of the following requirements have been met:

- a. A showing of good and sufficient cause; and
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, or conflict with existing local laws or ordinances.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
 7. Variances may be issued for non-residential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 12.055(D)(1), and otherwise complies with the anchoring standards in Section 2.820(A)(1).
 8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 9. The Community Development Department shall report any variances to the Federal Insurance Administration upon request.

(Section 12.055 added by Ordinance 09-03, 8/3/09)

12.060. CLASSIFICATION OF VARIANCES.

A. Class 1.

Class 1 includes minor variances which are small changes from the Code requirements and which will have little or no effect on adjacent property or users. Administrative approval by the Community Development Director of Class 1 variances may be granted.

Class 1 variances include:

1. Location of structures in relation to required yards;
2. Variances from minimum lot width and depth;
3. Variances from other quantitative standards by 10% or less.
4. Variances from the requirements of the Flood Hazard Overlay Zone section 2.800 to 2.825. *(Added by Ordinance 09-03, 8/3/09)*

B. Class 2.

Class 2 includes variances which are significant changes from the Code requirements and are likely to create impacts on adjacent property or users. A Class 2 variance may be granted by the Planning Commission.

Class 2 variances include, but are not limited to:

1. Variances from quantitative standards other than yard requirements by more than 10%;
2. Variances from other provisions of this chapter except density and use restrictions.

- C. The Community Development Director shall decide the classification of any variance application.
- D. If the Community Development Director believes that substantial issues are involved in a variance application, the Director may schedule a public hearing in accordance with the procedures specified in Sections 9.020 to 9.030.

12.070. APPLICATION AND PROCEDURE.

A. Application.

A request for either class variance may be initiated by a property owner or the owner's authorized agent by filing an application with the Community Development Department, on forms provided by the Department. The Community Development Director shall specify what information is required for the application; additional information may be required where determined by the Director.

B. Procedure.

Public notice and procedures on applications shall be in accordance with Article 9 except as noted in Sections 12.090 through 12.120.

12.090. ACTION ON CLASS 1 VARIANCE APPLICATION.

- A. The Community Development Director shall make a decision to approve or deny within 45 calendar days of submittal of a complete application.
- B. The Community Development Director shall determine whether the criteria for approval have been satisfied.
- C. All decisions shall be in writing and will include at a minimum:
 - 1. Name and address of applicant;
 - 2. Location of property (street number, map number, tax lot number, lot and block);
 - 3. Date of the decision;
 - 4. Conditions of approval, if any; and
 - 5. Notice of the appeal time and procedure.
- D. The decision will be mailed to the applicant, and to interested persons who have commented in writing.

12.100. APPEAL OF A CLASS 1 VARIANCE.

The decision of the Community Development Director on a Class 1 Variance may be appealed to the Planning Commission in accordance with 9.040.

12.110. ACTION ON CLASS 2 VARIANCE APPLICATION.

Hearings on a Class 2 Variance will be held in accordance with 9.030.

12.120. APPEAL OF A CLASS 2 VARIANCE.

The decision of the Planning Commission decision on a Class 2 Variance may be appealed to the City Council in accordance with 9.040.