

Chapter 24

VARIANCE

SECTION:

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10-24-1: PURPOSE

A variance is a modification of quantifiable/measurable (bulk regulation) requirements imposed by this title (e.g., lot/parcel: size, width, depth, coverage, street frontage required; structure heights, size or shape; parking space dimensions/quantities; setback or build to line requirements; sign dimensions/height; number of signs allowed; fence height; etc.). All variance permit applications must be approved by the City Council in order to be considered valid and in force. A variance shall not have the effect of allowing a use not otherwise allowed or conditionally allowed by chapter 3 of this title.

The Council is empowered to grant variances in order to prevent or to lessen practical development difficulties, unique site circumstances and unnecessary physical, geographical hardships inconsistent with the objectives of zoning as would result from a literal interpretation and enforcement of certain of the placement, bulk or quantifiable regulations prescribed by this title.

A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of: a) special characteristics applicable to the site which deprive it of privileges commonly enjoyed by other properties in the same zone or vicinity, and b) the variance is not in conflict with the public interest. Hardships must result from special site characteristics relating to the size, shape or dimensions of a site or the location of existing structures thereon, from geographic, topographic or other physical conditions, or from population densities, street locations, surrounding property land use/build-out patterns or condition(s), or traffic flow concerns, or other unique circumstances (i.e., historical or human error issues, etc.).

Variances are not intended to allow something that others do not have a permitted right to do. The purpose of a variance is to provide fair treatment and to see that individuals are not penalized because of site characteristics or a site situation beyond their control.

10-24-2: ACTIONS

10-24-2.A: Granting of Variance Permit: The Council may grant a variance permit with respect to requirements for fences and walls, site, area, width, frontage, depth, coverage, front yard, rear

yard, side yards, outdoor living area, height of structures, distances between structures or landscaped areas as the variance was applied for or in modified form if, on the basis of application, investigation and evidence submitted, the Council concludes the following:

10-24-2.A.1: Literal interpretation and enforcement of the regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this title.

10-24-2.A.2: There are extraordinary site characteristics applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

10-24-2.A.3: Literal interpretation and enforcement of the regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

10-24-2.A.4: The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

10-24-2.A.5: The granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

10-24-2.B: Waiver: The Council may grant variance permits for the waiver of required front and/or street side yard setbacks or for fence, wall or hedge heights. In order to approve such variances, the Council must conclude that a request is acceptable based on the conclusions listed in subsection A of this section and also accept a substitute plan, which provides equal safety or aesthetics qualities by other means. The substitute plan must:

10-24-2.B.1: Provide adequate vision clearance for vehicles, both those passing on the street and those leaving the development site.

10-24-2.B.2: Include landscaping.

10-24-2.B.3: Provide a front yard of at least one-half ($1/2$) that required in the relevant zoning district along at least one-half ($1/2$) the property's frontage.

10-24-2.B.4: Not be detrimental to public health, safety or welfare, or be materially injurious to properties or improvements in the vicinity.

10-24-2.C: Parking Reduction(s): The Council may grant a variance permit with respect to requirements for off street parking facilities (e.g., number of spaces required) or off street loading facilities if, on the basis of the application, investigation and the evidence submitted, the council concludes the following (exclusive of those listed in subsection A of this section):

10-24-2.C.1: Neither present nor anticipated future traffic volumes generated by the use of the site(s) in the vicinity reasonably require literal interpretation and enforcement of the regulations.

10-24-2.C.2: The granting of the variance will not result in the parking or leading of vehicles on public street in such a manner as to interfere with the free flow of traffic.

10-24-2.C.3: The granting of the variance will not create a safety hazard or any other condition inconsistent with the objectives of the zoning ordinance.

10-24-2.D: Limited Variance Approval Authority Granted to the Planning and Zoning Department: The Planning Director or his/her designee shall have approval authority for the following items:

10-24-2.D.1: In RS and RD zones, side and rear yard setbacks may be reduced to three feet (3') for accessory structures where hardships exist, including: topographical challenges, lot size, or confined buildable area. If a variance is granted, the structure shall be restricted within the reduced setback to a height of twelve feet (12').

10-24-2.D.2: Fence heights up to eight feet (8') where topographical challenges exist.

10-24-3: DURATION AND CONDITION(S) OF APPROVAL

The use or construction permitted under the terms of any variance permit shall be commenced within a six (6) month period. If such use or construction has not commenced within such time period the variance shall no longer be valid. Prior to the expiration of the six (6) month period the council may, as a routine business item, and upon request of the applicant, extend approval for up to an additional six (6) months from the original date of approval. The council may also establish conditions of approval in conjunction with issuance of a variance permit in order to improve or mitigate situations involving a variance request.

10-24-4: APPLICATION

Application for a variance permit shall be filed with the Planning Division on a form prescribed by the City which shall include any information the Director or his/her designee deems necessary.

The application shall be accompanied by an accurate scale drawing of the site and any adjacent property affected, showing all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off street parking and off street loading facilities and landscaped areas.

The application shall be accompanied by the appropriate fee which is established by council resolution and is nonrefundable.

More than one variance may be requested in conjunction with an application and each item needing variance approval as part of the application will require separate council action but not separate advertisement, notification, or placement on an agenda.

10-24-5: NOTICE

A notice of public hearing shall be given not less than ten (10) calendar days nor more than thirty (30) calendar days prior to the date of the public hearing by mailing notices to property owners adjacent to

the property being considered for a variance. The notice shall contain the address or location of property for which the application is taken as well as a brief description of the nature of the application.