

## VARIANCES



The regulations within the Development Code were adopted by the City Council to protect the safety, livability, appearance and economic health of our city. The provisions of the Code regulate such things as height of buildings, size and placement of signs, and setback requirements. Occasionally, there may be extenuating circumstances which warrant varying from some of the provisions.

### **What Is A Variance?**

A variance may not be used to allow uses which are already prohibited. The variance procedure is outlined in Section 151.320 -151.324 of the Development Code. The Planning Commission has the authority to approve or deny variances.

The following regulations of the Development Code are not eligible for a variance:

1. The uses permitted in the zoning district.
2. Definitions.
3. The minimum and maximum residential density allowed in a zoning district.
4. Restrictions on uses or development that contain the word "Prohibited".
5. A change in established procedures.

A variance may be permitted if the review authority finds that the applicant has complied with all review criteria.

### **How Do I Apply?**

Application forms are available at City Hall. The application must meet the requirements of the law and justify the proposal in terms of the relevant ordinance criteria. In your application, you must prove that your variance meets the following criteria; if it does not, the Planning Commission and City Council are under legal obligation to deny it. A variance may be granted when you have provided sufficient evidence to support the following findings of fact:

1. The need for the variance does not result from prior actions of the applicant or owner, or from personal circumstances of or caused by the applicant or owner, such as financial circumstances;
2. To meet the need, the request is the minimum necessary variation from the Code requirement; and
3. The circumstances that apply to the site do not typically apply to other properties in the same vicinity or zoning district and are unique or unusual.

### **The Review Process**

After the application has been submitted, a date for a public hearing before the Planning Commission will be set. Property owners and residents adjacent to the site of the proposal will be notified and a legal notice of the hearing will be published in the newspaper. Staff will review the application and visit the site, compiling background information on the proposal.

They will analyze:

- how your request relates to the provisions of the law
- how the proposal addresses access to public facilities
- how the proposal relates to City plans
- the possible consequences of the proposal

The proposal is also circulated to all major public service departments to see how their services could be affected by the proposed variance. With all of this information in hand, staff will write a report recommending approval or denial. This report is sent to you and to the Planning Commission prior to the hearing. The staff report may include suggested conditions which the Commission may impose on approval of the project. The Planning Commission hearing is quasi-judicial, meaning there will be opportunity for testimony both for and against the proposal. At this time, you may address the Commission and staff will present their report. The Commission will consider all written and oral testimony and must reach its decision by evaluating whether or not the proposal meets the ordinance requirements listed above. If the Commission approves the variance, they are legally obligated to list “findings of fact” that satisfy these criteria. It is your responsibility to supply facts and evidence for the Planning Commission to use in support of its decision.

### **If the Planning Commission Approves**

The variance becomes effective following a fourteen (14) day appeal period. You may then apply for the necessary permits to proceed with the project. If the approval is protested, the protesting party may appeal (within 14 days) to the City Council and be granted a public hearing. The City Council may reverse, affirm, or modify the Planning Commission’s decision.

### **If the Planning Commission Denies**

The Planning Commission’s decision to deny is final, unless appealed to the City Council. In order to appeal the decision, you (or another affected party) must submit a letter of appeal and pay an appeal fee within fourteen (14) days after you have been mailed written notice of the Planning Commission’s decision. A date will be set for a public hearing with the City Council. The City Council’s decision on the appeal will be final.

### **Some Things to Remember**

Please refer to the Development Code for details on variance procedures and regulations for each zone. Discussions with the Planning staff are encouraged prior to submitting a formal application. It is important to note that while you may seem to have valid reasons for requesting a variance, the requirements on the Development Code (which are law) are the only basis upon which the Planning Commission and City Council may make a decision. A variance cannot be granted solely on your good intentions or economic need. City staff’s role in the process is to assist you in ensuring that the application meets all the requirements of the law. They also represent the community as a whole, identifying situations that could cause an increase in the cost of providing city services, or that could have adverse impacts on adjacent properties.