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DIVISION 3. - VARIANCES

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Sec. 90-391. - Variances.

An owner or his authorized agent may request a variance from the land development regulations as provided for in this division. The planning board shall have the quasi-judicial power necessary to grant such variances that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the land development regulations would result in unnecessary hardship. A variance from the terms of the land development regulations shall not be granted by the planning board unless and until the requirements of this division are met.

(Ord. No. 97-10, § 1(1-2.6), 7-3-1997; Ord. No. 08-04, § 5, 5-20-2008)

Sec. 90-392. - Application.

- (a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.
- (b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued.

(Ord. No. 97-10, § 1(1-2.6(A)), 7-3-1997; Ord. No. 08-04, § 6, 5-20-2008)

Sec. 90-393. - Notice and hearing procedure.

In considering and acting upon applications for a variance from the land development regulations, the following procedures shall be observed:

- (1) *Date of hearing.* The hearing shall be held by the planning board at a date and time fixed by the chairperson of the planning board.
- (2) *Notice.* Notice shall be provided as required by division 2 of article VIII of this chapter.
- (3) *Appearance and presentation.* At any hearing upon any matter subject to this division, the applicant or his authorized representative seeking action by the planning board and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The chairperson of the planning board may, at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.

(Ord. No. 97-10, § 1(1-2.6(B)), 7-3-1997; Ord. No. 00-04, § 3, 2-1-2000; Ord. No. 08-04, § 7, 5-20-2008)

Sec. 90-394. - Action.

Action by the planning board upon any matter subject to the provisions of this division shall be announced by the chairperson of the board immediately following the vote determining such action and shall thereafter be embodied in a written order prepared by the planning director and executed by the chairperson of the planning board and filed with the city clerk. Such written order shall be incorporated into the minutes of the meeting at which such action occurred. The board shall enter its order denying such application, specifying the reasons therefore, or granting such application, in whole or in part, under such terms and conditions as the board shall determine appropriate.

The planning board shall not grant a variance to permit a use not permitted by right or as a conditional use in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance. No variance shall be granted that increases or has the effect of increasing density or intensity of a use beyond that permitted by the comprehensive plan or these LDRs.

(Ord. No. 97-10, § 1(1-2.6(C)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 08-04, § 8, 5-20-2008)

Sec. 90-395. - Standards, findings.

- (a) Standards for considering variances. Before any variance may be granted, the planning board must find all of the following:
 - (1) Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.
 - (2) Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

- (3) Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.
 - (4) Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
 - (5) Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
 - (6) Not injurious to the public welfare. That the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.
 - (7) Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- (b) The planning board shall make factual findings regarding the following:
- (1) That the standards established in subsection (a) have been met by the applicant for a variance.
 - (2) That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

An order permitting a variance may prescribe appropriate conditions and safeguards, including visual screening, and may also prescribe a reasonable time limit within which construction or occupancy of the premises for the proposed use shall have begun or have been completed or both. Upon entry of an order granting a variance, the administrative official shall not issue any development order for the subject property unless and until all of the conditions and requirements of the order granting the variance are met. Violation of those conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the land development regulations and shall render the variances revoked.

(Ord. No. 97-10, § 1(1-2.6(D)), 7-3-1997; Ord. No. 02-01, § 1, 1-2-2002; Ord. No. 03-09, § 1, 3-4-2003; Ord. No. 08-04, § 9, 5-20-2008)

Sec. 90-396. - Effect and limitation.

An order granting a variance from the land development regulations shall be deemed applicable to the parcel for which it is granted and not to the individual applicant, provided that no order granting a variance shall be deemed valid with respect to any use of the premises other than the use specified in the application for a variance.

(Ord. No. 97-10, § 1(1-2.6(E)), 7-3-1997)

Sec. 90-397. - Reapplication.

Reapplication for the same or similar piece of property requesting the same or similar variance from the land development regulations cannot be made within two years from the date the application was originally denied by the board of adjustment or planning board. An applicant may,

however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

(Ord. No. 97-10, § 1(1-2.6(G)), 7-3-1997; Ord. No. 03-09, § 2, 3-4-2003; Ord. No. 08-04, § 10, 5-20-2008)

Secs. 90-398—90-425. - Reserved.