

SUBCHAPTER 70

VARIANCES

70.005 Power to Grant Variances

The Planning Commission shall have the power to vary or modify the requirements of this ordinance. The power to grant such variances shall be used sparingly and only according to the provision of this ordinance.

70.010 Procedures

A variance is a land-use action. The procedures governing a request for a variance shall be those set forth in Chapter 11 of this ordinance, "Land-Use Actions".

70.012 Administrative Variances

A. The purpose of this section is to allow for City Manager or designee review of certain minor variances which are limited in scope and which are unlikely to have impacts beyond the property on which they are located.

B. Administrative Variances may be granted for relief from any dimensional development standard in the Zoning Ordinance, but such relief shall not exceed twenty (20) percent of the specified requirement.

C. Procedure and Standards. An application and site plan shall be filed pursuant to Subchapter 11 of the Zoning Ordinance. In reviewing the request, the City Manager or designee shall find that:

1. Granting the variance will not have a detrimental effect on uses and development on adjacent properties;
2. The variance is made necessary, due to natural or physical constraints of the building site; and,
3. The variance is consistent with the Comprehensive Plan designation and the purpose and intent of the applicable Zoning District.

D. A determination by the City Manager or designee regarding such a variance request shall be considered a ministerial (Type I) action as prescribed by Section 11.015(D) of the Zoning Ordinance. Notice of the decision shall be provided as required by Section 11.015(D).

E. Appeal of an administrative variance decision shall be made to the Planning Commission as prescribed in Section 11.015(D) of the Zoning Ordinance.

70.015 Standards for Granting Certain Variances

The Planning Commission may permit and authorize a variance from any dimensional development standard in the Zoning Ordinance, where such relief shall exceed twenty (20) percent of the specified requirement if the Commission finds that the variance would meet all of the following standards:

- A. Exceptional or extraordinary circumstances or conditions apply to the property which do not apply generally to other properties in the same zone or vicinity; and result from lot size or shape, legally existing prior to the date of this Ordinance, topography, or other circumstances that substantially exist.
- B. The practical difficulties resulting to the applicant for the variance have not been caused by the applicant or previous property owner.
- C. That the special conditions and circumstances on which the application is based do not result from the negligent or knowing violation of this Ordinance by the applicant or previous property owner.
- D. The variance will be consistent with the Comprehensive Plan and with the purpose of the zoning in which the applicant's property is located.
- E. Varying the requirements of the zoning ordinance will be of greater benefit to the public than would enforcement of the requirements of the zoning ordinance.

70.020 Standards for Granting Other Variances

Any provision of this ordinance, that is not a dimensional development standard, may be varied if the Planning Commission finds that the variance would meet all of the following standards:

- A. The requirements of the zoning ordinance prevent the applicant for the variance from making any substantial, beneficial use of the applicant's property.
- B. The condition which prevents or will prevent the applicant from making any substantial, beneficial use of the property is a condition peculiar to the applicant's property and not found generally in other property in the zone.
- C. The condition which prevents the applicant from making substantial, beneficial use of the property was not caused by the applicant or previous property owner.
- D. The variance will be consistent with the Comprehensive Plan and with the purpose of the zone in which the applicant's property is located.

- E. Varying the requirements of the zoning ordinance will be of greater benefit to the public than would enforcement of the requirements of the zoning ordinance.

70.021 Standards for Reducing the Minimum Lot Size to 4,500 Square Feet in Hill's Addition

Existing lots in Hill's Addition in the City of Independence may be reduced to no less than 4,500 square feet if the Planning Commission finds that the variance would meet all of the following standards:

- A. Any new lot created under the provisions of this Subsection must have a minimum frontage on a public street of 15' to allow for a driveway access, mail delivery and street address for police and emergency services.
- B. The variance will be consistent with the Comprehensive Plan and with the purpose of the zoning in which the applicant's property is located.
- C. Varying the requirements of the zoning ordinance will be of greater benefit to the public than would enforcement of the requirements of the zoning ordinance.
- D. Granting the variance will not be materially detrimental to the public welfare or to improvements or residents in the neighborhood of the subject property, including considerations of public fire and life safety protection.
- E. For properties located within the National Historic District, granting of the variance will result in a lot, which maintains any unifying development patterns such as sidewalk and street tree location, setbacks, building coverage and orientation to the street.

70.025 Limiting Variances

In granting any variance under the provisions of this chapter, the Planning Commission may impose conditions. Such conditions shall include, but not be limited to, limitations on the duration of the variance, restrictions on the dimensions of structures, and conditions regarding the location of structures. Such conditions shall apply to the applicant for such a variance and to any purchasers, renters, lessees, or subsequent owners of the subject property. A violation of such conditions shall constitute a violation of this ordinance.

70.030 Effective Date of the Variance

A variance granted by the Planning Commission under the provisions of this ordinance shall become effective 12 days after the mailing of notice of the Planning Commission's action unless such action is appealed to the City Council. An appeal of the Planning Commission's decision shall stay such action until the appeal has been heard by the city Council.

70.035 Exercise of Variance

A variance granted under the provisions of this ordinance shall be effective only if exercised within 180 days of the effective date. Failure to exercise the variance within 180 days of the effective date renders the variance void. Extensions of this time period may be granted by a majority vote of the Planning Commission. Such extensions shall not exceed 180 days. Requests for such extensions shall be submitted in writing to the City Manager at least 30 days prior to the expiration of the effective period of the variance.

70.040 Cessation of a Variance

The discontinuance of any activity authorized by a variance for a continuous period exceeding 180 days shall be deemed an abandonment of such variance. The property affected by the variance shall thereafter be subject to all of the applicable provisions and requirements of this ordinance.

70.045 Transfer of a Variance

Any variance granted to a property owner under the provisions of this ordinance is transferable to subsequent owners of the same property unless otherwise provided at the time of the granting of the variance.