

# Ord. 23-S-27

UDC Amendments to Article 4 – Variances  
& Article 9 – Landscaping and Tree  
Mitigation

Samuel Haas | SENIOR PLANNER

# Article 4 – Variances

## Proposed Amendments

UDC Section 21.4.12.A.:

*"A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this UDC to other parcels of land in the district."*

# Article 4 – Variances

## Proposed Amendments

### Local Government Code 211.009(b-1):

*In considering a variance as applied to a structure, the board may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:*

- a) The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;*
- b) Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;*
- c) Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;*
- d) Compliance would result in the unreasonable encroachment on an adjacent property or easement; or*
- e) The municipality considers the structure to be a nonconforming structure*

# Article 4 – Variances

## Proposed Amendments

### UDC Section 21.4.12.D. *Criteria for approval:*

2. Special conditions of restricted area, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district;
3. The hardship is in no way the result of the applicant's own actions; and
4. The interpretation of the provisions in this UDC or any amendments thereto would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
5. In considering a variance as applied to a structure, the Board may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
  - a. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
  - b. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
  - c. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - e. The municipality considers the structure to be a nonconforming structure.

# Article 9 – Min. Tree Caliper Proposed Amendments

In the Local Government Code Section 212.905, the State has a minimum tree planting requirement of 2" inches.

All trees planted above this requirement are eligible for mitigation credits.

## Tree Mitigation - UDC Section 21.9.9.D:

1. Protected Class Trees. Protected trees shall be mitigated at a one-to-one (1:1) DBH inch ratio for every tree removed. Replacement trees shall have a minimum DBH of two and one half inches (2.5").
2. Heritage Class Trees. Heritage Class trees shall be mitigated at a three-to-one (3:1) DBH inch ratio for every tree removed. Replacement trees shall have a minimum DBH of two and one half inches (2.5").

# Article 9 – Min. Tree Caliper Proposed Amendments

## Residential Landscaping - UDC Section 21.9.7.C.6:

Every single family residential lot shall provide a minimum of two (2) shade trees which are a minimum of two and one-half inches (2.5") caliper measured at four feet (4') above ground level at the time of planting.

## Nonresidential Landscaping - UDC Section 21.9.7.D.5:

Trees planted shall be a minimum of two and one-half inches (2.5") caliper measured at four feet (4') above ground level at the time of planting.....

# Article 9 – Min. Tree Caliper Proposed Amendments

**Staff is proposing to lower all minimum Tree Caliper Requirements to 2" in conformance with LGC requirements and to make the UDC more consistent and easier to apply.**

**Additionally, trees are measured by Diameter at Breast Height (DBH) which is an industry standard of 4.5 feet above the ground. Staff is also proposing to amend the UDC to include this.**

# Ord. 23-S-27

## Proposed Amendments

### Article 4 – Variances

- Adding LGC language to 21.4.12.D: *Criteria for approval*

### Article 9 – Tree Min. Caliper

- 21.9.9 - Tree Mitigation
  - Min. replacement tree caliper size
- 21.9.7 - Landscaping
  - Min. tree planting size (Res. & Non-res.)
  - Changing height of measurement from 4 feet to 4.5 feet
    - *Industry standard practice*

# Staff Recommendation

- **The amendments would help the UDC align more closely with the LGC. Would also provide added clarity for applicants and staff**
- **The Planning & Zoning Commission recommended approval with a 7-0 vote at the September 13<sup>th</sup>, 2023, meeting.**
- **Therefore, staff recommends approval of the amendments to the Unified Development Code (UDC) as proposed and discussed.**

# COMMENTS & QUESTIONS