

**Sec. 21.4.12. Variances.**

A. *Applicability.*

1. The BOA shall have the ability to authorize, in specific cases, a variance from the zoning regulations of this UDC if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this UDC would result in unnecessary hardship, so that the spirit of this UDC is observed and substantial justice is done. 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.
2. Approval of a variance authorizes a property owner to submit subsequent development applications consistent with the approved variance.

B. *Application Requirements.* Any request for a variance shall be accompanied by an application prepared in accordance with the Development Manual.

C. *Processing of Application and Decision.*

1. *Submittal.* An application for a variance shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee may, at its option, request a recommendation from any other appropriate City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the BOA for consideration.
2. *Notification requirements.* An application for a variance requires the following notification in accordance with section 21.4.3:
  - a. Written notice; and
  - b. Published notice.
3. *Decision by the BOA.*
  - a. The BOA shall receive the recommendation of the City Manager or his/her designee and shall hold a public hearing in accordance with section 21.4.4. The Board may vote to approve, approve with conditions, or deny the variance.
  - b. The Board may, on its own motion or by request of the property owner, postpone consideration of the variance to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision.
  - c. The approval shall be effective for a period of 180 days after the date of such approval. If no application for building permit is submitted within that time, the variance shall become null and void.
  - d. The disapproval of a variance shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.

D. *Criteria for approval.* In order to make a finding of hardship and grant a variance from the zoning regulations of this UDC, the Board must determine the following:

1. The requested variance does not violate the intent of this UDC or its amendments;

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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.
- E. *Appeals of BOA Decisions.* Any person or persons aggrieved by any decision of the BOA, or any taxpayer or any officer, department, board of the City may appeal a decision of the BOA regarding any variance request in accordance with section 21.3.4 of this UDC.
- F. *Finding of fact.* The board shall complete a finding of fact for Variance or appeal to support its conclusion for each variance or appeal presented to it.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)