

CHAPTER 6 - VARIANCES

SECTION

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6.01: PURPOSE.

The purpose of this Section is to provide for deviations from the literal provisions of this Ordinance in instances where their strict enforcement would cause undue hardship because of physical circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance.

6.02: UNDUE HARDSHIP.

Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by this Ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the Ordinance. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

6.025: PRACTICAL DIFFICULTIES.

"Practical Difficulty" as used in connection with the granting of a variance means the property in question cannot be put to reasonable use under conditions allowed by this Ordinance. The granting of a variance may be issued only if it is "in harmony with the general purpose and intent" of the ordinance and consistent with the comprehensive plan. "Practical Difficulties" are described as follows:

- A. The property owner proposed to use the property in a reasonable manner not permitted by an official control.
- B. The plight of the land owner is due to circumstances unique to the property not created by the landowner.
- C. The variance, if granted, will not alter the essential character of the locality.
(Approved May 6, 2013 under Ordinance # 90)

6.03: APPLICATION AND PROCEDURE.

A variance requires a public hearing and is to be processed in accordance with the procedures set forth in Chapter 9, (Zoning Application Procedures) of this Ordinance. The information required for all zoning applications generally consists of items outlined in Chapter 9 (Zoning Application Procedures) of this Ordinance, and shall be submitted unless exempted by the City.

6.04: CRITERIA.

The City Council shall not approve any variance request unless they find failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, the following criteria have been met:

- A. Physical Characteristics. That because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
- B. Unique to Parcel. That the conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.
- C. Purely Financial. That the purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.
- D. Self-Created. That the alleged difficulty or hardship is caused by this Ordinance and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.
- E. Public Welfare. That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.
- F. Nuisance Avoided. That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion of the public streets, increase the danger of fire, or endanger the public safety.
- G. Minimum Action. That the requested variance is the minimum action required to eliminate the hardship.
- H. Use Variance. That the requested variance does not involve a use that is not allowed within the respective zoning district.

6.05: CONDITIONS.

Conditions may be imposed in the granting of a variance to ensure compliance with and to protect adjacent properties and the public interest.

6.06: EXPIRATION OF VARIANCE.

Unless otherwise specified, the approved variance shall become null and void within one (1) year of the date of approval unless the property owner or applicant has substantially commenced construction of any building, structure, addition or alteration, or request as part of the approved variance or unless a petition for a time extension has been granted by the Zoning Administrator. Such extension request shall be submitted in writing at least thirty (30) days prior to expiration of the variance and shall state facts showing a good faith effort to complete work permitted under the original approval.

6.07: SHORELAND MANAGEMENT DISTRICT.

A variance may not circumvent the general purposes and intent of the Shoreland Management District Ordinance. No variance may be granted that would allow any use that is prohibited in the underlying zoning district in which the subject property is located. The Commission of the Department of Natural Resources or its assigned agent (Area Hydrologist) shall be notified in writing and said notice shall be postmarked at least ten (10) days in advance of the public hearing of any request of a variance included within the Shoreland Management Area. Notice of final action for any of the applications identified above shall be sent to the Commissioner of the Department of Natural Resources and postmarked within ten (10) days of final action.