

Article XII. Variances, Conditional Use Permits and Unclassified Use Permits Generally.

Sec. 44-155. Variances generally--Director of community development may grant.

The director of community development shall have the authority, as an administrative act, to grant variances of ten percent for front yard, side yard, and rear yard setback requirements and for dwelling unit size requirements relating to attached additions, remodeling, or rehabilitating existing developed dwelling units in all residential zones. A nonconforming building, nonconforming only as to the yard regulations, may not be increased in size unless the addition conforms to the zoning regulations; provided, however, that the addition may be located in a required yard if it does not encroach into any portion of the required yard to a greater extent than the existing nonconforming building. In no event shall any such addition reduce the width of a side yard to less than 3 feet, or the depth of a front or rear yard to less than 50 percent of that required by the yard regulation of the zone. The total of all additions encroaching into any required yard shall not exceed the height or length of that portion of the adjoining nonconforming building extending into the same required yard. If any party is dissatisfied with or aggrieved by the action of the director of community development, such party may appeal such action to the planning commission within the time limit and manner procedurally provided in Section 44-165 of this Code. (Ord. Nos. 178, 245, 521, 747)

Sec. 44-156. Same--Purpose.

The sole purpose of any variance shall be to prevent discrimination, and no variance shall be granted which would have the effect of granting a special privilege not shared by other property in the same vicinity and zone; provided, that a variance may be granted permitting the temporary establishment of uses necessary by reason of public emergencies or need, or to permit the permanent establishment of a use essential for necessary service to the public if such use is found to be not incompatible to the classes of use permitted in the zone. (Ord. No. 178)

Sec. 44-157. Same--Required showings for variances.

Before any variance may be granted, it shall be shown:

- (a) That there are exceptional extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to the other property or class of use in the same vicinity and zone.
- (b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone but which is denied to the property in question.
- (c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.
- (d) That the granting of such variance will not adversely affect the comprehensive general plan. (Ord. No. 178)

Sec. 44-158. Conditional use permits--Grant; "conditional use" construed.

A conditional use as defined by this chapter means a use which:

- (a) Because of characteristics peculiar to it;
- (b) Because of considerations of smoke, fumes, noise, dust, odor, vibration or hazard;
- (c) Because of size, technological process or type of equipment; or
- (d) Because of the location with reference to surroundings, street or highway width, traffic generation or other demands upon public facilities, requires special consideration relative to placement at specific locations in the zone or zones where classified to insure proper integration with other existing or permitted uses in the same zone or zones. In granting the permit, certain safeguards to protect the health, safety and general welfare may be required as conditions of approval. (Ord. No. 327)

Sec. 44-159. Same--Additional information required.

In addition to the information required in the application, the applicant for a conditional use permit shall substantiate to the satisfaction of the planning commission or city council, or both, the following facts:

- (a) That the requested use at the location proposed will not:
 - (1) Adversely affect the health, peace, safety or welfare of persons residing or working in the surrounding area;
 - (2) Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; nor
 - (3) Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare; and
- (b) That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this chapter, or as is otherwise required in order to integrate such use with the uses in the surrounding area; and

- (c) That the proposed site is adequately served:
- (1) By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate, and
 - (2) By other public or private service facilities as are required; and
- (d) That such use is necessary or desirable for the development of the community, is essentially in harmony with the various elements of the general plan and is not detrimental to existing uses or to uses specifically permitted in the zone in which the proposed use is located. (Ord. No. 327)

Sec. 44-160. Repealed by Ordinance No. 328, §2.

Sec. 44-161. Notice and hearing on application for variance, conditional use permit or unclassified use permit.

Upon the filing of an application for a variance, conditional use permit or unclassified use permit by a property owner of record, or a plaintiff in any proposed or pending action in eminent domain to acquire property affected, or by a lessee with the written consent of the owners, which application sets forth fully the grounds for, and the facts deemed to justify the granting of the variance, conditional use permit, or unclassified use permit, the planning commission shall give public notice, as provided in article XIV, of the intention to consider at a public hearing the granting of a variance, conditional use permit or unclassified use permit. (Ord. Nos. 178, 250)

Sec. 44-162. Resolutions granting or denying variance, conditional use permit or unclassified use permit -- Generally.

Not more than thirty days following the termination of the proceedings of the public hearing on a variance, conditional use permit or unclassified use permit, the planning commission shall announce its findings by formal resolution, and such resolution shall recite, among other things, the facts and reasons which, in the opinion of the planning commission, make the granting or denial of the variance, conditional use permit or unclassified use permit necessary to carry out the provisions and general purpose of this chapter, and shall order that the variance, conditional use permit or unclassified use permit be granted or denied, and if such resolution orders that the variance, conditional use permit or unclassified use permit be granted, it shall also recite such conditions and limitations as the planning commission may impose. (Ord. Nos. 178, 250)

Sec. 44-163. Same--To be numbered and maintained as permanent record.

The formal resolution of the planning commission announcing its findings and order after hearing on an application for a variance, conditional use permit or unclassified use permit shall be numbered consecutively in the order of their filing and shall become a permanent record in the files of the planning commission. (Ord. Nos. 178, 250)

Sec. 44-164. Same--Copy to be mailed to applicant.

Not later than fourteen days following the rendering of a decision ordering that a variance, conditional use permit or unclassified use permit be granted or denied, a copy of the resolution shall be mailed to the applicant at the address shown on the application filed with the planning commission. (Ord. Nos. 178, 250)

Sec. 44-165. Appeals from decisions of Planning Commission - generally. Hearing de novo.

Within ten days after the receipt by the applicant of a variance, conditional use permit, or unclassified use permit or notice of action by the Planning Commission, any aggrieved or interested person may, if dissatisfied with or aggrieved by the action of the Planning Commission, file with the City Clerk an appeal in writing to the City Council from such action of the Planning Commission upon depositing a filing fee in the amount of one-half of that required on filing the original application. The filing of such appeal within the stated time shall stay the effective date of the decision of the Planning Commission until such time as the City Council has acted on the appeal as set forth in this article. The hearing on the appeal by the City Council shall be a hearing de novo. In the absence of such appeal, the action of the Planning Commission shall be final. (Ord. Nos. 178, 211, 245, 250, 761, 810)

Sec. 44-165.1. Hearing de novo.

- (a) Any order, decision, requirement, ruling or determination of the city planning commission may be ordered by any member of the city council to be set for hearing de novo before itself.
- (b) The written order of the city council member setting such matter for hearing de novo before itself must be made within ten (10) days after the written rendition has been given of the action of the planning commission. Said order shall be filed with the city clerk.
- (c) In the event the city council or member thereof orders any public hearing de novo such hearing de novo shall be in the manner and method as set forth in Section 44-166, and with notice to the applicant. The city council shall have the same rights, duties and powers as to said hearing de novo as are set forth in Sections 44-167 and 44-168. (Ord. Nos. 675, 761)

Sec. 44-166. Same--Transmission of record to council; notice and hearing by council generally.

Upon receipt of an appeal to the city council, the city clerk shall advise the secretary of the appeals board and such secretary shall transmit to the city clerk the appeals board complete record of the case. Within not to exceed sixty days following receipt of the written appeal, the city council shall conduct public hearing.

The action by the city council on the appeal shall be by a majority vote of the voting members of the city council and shall be final and conclusive. (Ord. Nos. 178, 211, 245, 553, 554, 809)

Sec. 44-167. Same--Adverse decision by council may be referred to planning commission.

If the city council proposes an action that is in any way contrary to the action taken by the planning commission, it may refer its findings to the planning commission and request a further report of the planning commission on the matter. Failure of the planning commission to report to the city council within forty days after reference may be deemed to be an approval by the planning commission of any proposed change. (Ord. Nos. 178, 211)

Sec. 44-168. Same--Resolution of council granting, denying, etc., variance, conditional use permit or unclassified use permit--Generally; action of council to be by majority vote and shall be final, etc.

The city council shall announce its findings and decision by formal resolution not more than twenty days following the termination of proceedings of the hearings, or not more than twenty days following the receipt of a report from the planning commission when a matter has been referred back to the planning commission, and such resolution shall recite, among other things, the facts and reasons which, in the opinion of the city council, makes the granting or denial of the appeal necessary to carry out the general purpose of this chapter, and shall order that the variance, conditional use permit or unclassified use permit be granted or denied or modified subject to such conditions or limitations as it may impose.

The action by the city council on the application for a variance, conditional use permit or unclassified use permit shall be by a majority vote of the city council and shall be final and conclusive. (Ord. Nos. 178, 211, 250)

Sec. 44-169. Same--Same--Copy to be mailed to applicant, etc.

Not later than seven days following the adoption of a resolution ordering that a variance, conditional use permit or unclassified use permit be granted or denied, a copy of such resolution shall be mailed to the applicant and to any other parties requesting notice of the action, and one copy shall be attached to the planning commission's file of the case and such file returned to the planning commission for permanent filing. (Ord. Nos. 178, 250)

Sec. 44-170. Revocation and modification.

The planning commission may, after a public hearing held in the manner prescribed in article XII governing variances, conditional use permits and unclassified use permits, revoke or modify on any one or more of the following grounds any conditional use permit, unclassified use permit or variance previously issued:

- (a) That the approval was obtained by fraud.
- (b) That the use for which such approval was granted is not being exercised.
- (c) That the use for which such approval was granted has ceased to exist or has been suspended for one year or more.
- (d) That the conditional use permit, unclassified use permit or variance is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, provision of this Code, ordinance, law or regulation.
- (e) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance. (Ord. Nos. 178, 252)

Sec. 44-171. Status of unexercised grant of exception or variance.

Any unexercised grant of exception or variance granted more than one year preceding the effective date of the ordinance from which this chapter derives is revoked on the effective date of such ordinance; any unexercised grant of exception or variance granted within one year preceding the effective date of such ordinance and which has not been substantially exercised within ninety days following the effective date of such ordinance shall be null and void at the end of such ninety day period. (Ord. No. 178)

Sec. 44-172. Expiration.

Any conditional use permit, unclassified use permit or variance granted by the planning commission or city council becomes null and void if not exercised within the time specified in such conditional use permit, unclassified use permit or variance, or if no date is specified, within one year from the date of approval of such conditional use permit, unclassified use permit, or variance.
(Ord. Nos. 178, 252)

Sec. 44-172.1. Renewal.

- (a) A Conditional Use Permit, Unclassified Use Permit or Variance, subject to expiration under Section 44-172 may be renewed for an additional period of one (1) year; provided, that prior to the expiration date, an application for renewal of the Conditional Use Permit, Unclassified Use Permit or Variance is filed with the Planning Department. (Ord. No. 917)
- (b) The Planning Commission, after a public hearing, may grant or deny an application for renewal of a Conditional Use Permit, Unclassified Use Permit or Variance, subject to the modification of existing conditions of approval, and/or the addition of new conditions of approval. (Ord. No. 917)

(Ord. Nos. 178, 211, 245, 250, 252, 327, 521, 553, 554, 675, 706, 747, 761, 809, 810, 917)

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