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Article V. Appeal, Variances, Interpretations  
Ord. 427-AC, 460-AC

Section

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Sec. 95.00. Appeals. (a) An appeal from any final order or decision of the city planner may be taken to the planning commission by any person aggrieved. An appeal is taken by filing with the city planner and the planning commission written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the city planner or council when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff.

(b) An appeal from any final order or decision of the planning commission may be taken to the city council by any person aggrieved. Filing of appeal shall be the same procedure as described in subsection (a) of this section.

(c) An appeal must be taken within ten days after the date of the decision or order appealed from.

(d) Whenever an appeal is filed, the city planner shall forthwith transmit to the planning commission or city council all the papers constituting the record relating to the action appealed from.

(e) The planning commission or council may reverse or affirm (wholly or partly) or may modify the order, requirement, decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the commission shall have all the powers of the officer from whom the appeal is taken. Ord. 427-AC

Sec. 95.01. Variances. (a) An application for a variance shall be submitted to the planning commission by filing a copy of the application with the city planner in the planning department. Applications shall be handled in the same manner as applications for special use permits.

(b) A variance may be granted by the planning commission if it concludes that strict enforcement of the ordinance codified in this part would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance codified in this part will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

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- (1) If the applicant complies strictly with the provisions of the ordinance codified in this part, he can make no reasonable use of his property;
- (2) The hardship of which the applicant complains is one suffered by the applicant rather than neighbors or the general public;
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- (5) The hardship is not the result of the applicant's own actions; and
- (6) The variance will neither result in the extension or initiation of a nonconforming situation.

(c) In granting variances, the planning commission may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

(d) A variance may be issued for an indefinite duration or for a specified duration only.

(e) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this part. Ord. 427-AC

Sec. 95.01.1. Limitations on granting waivers and variances. Neither the city council nor the planning commission is authorized to grant waivers or variances to any of the provisions of this Part III, except:

- (a) Only if necessary and only to the extent necessary to prevent the taking of property in violation of the federal or state constitutions by the strict applications of the requirements of this Part III; or
- (b) As provided in Section 95.01. Ord. 460-AC

Sec. 95.02. Interpretations. (a) The planning commission is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions, if such questions arise in the context of an appeal from a decision of the city planner.

(b) An application for a map interpretation shall be submitted to the planning commission by filing a copy of the application with the city planner in the planning department. The application shall contain sufficient information to enable the commission to make the necessary interpretation.

(c) Where uncertainty exists as to the boundaries of zones as shown on the official zoning map, the following rules shall apply:

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- (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams or railroads should be construed to follow such centerlines;
- (2) Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
- (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines;
- (4) Where a district boundary divides a lot or where distances are not specifically indicated on the official zoning map, the boundary shall be determined by measurement, using the scale of the official zoning map;
- (5) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

(d) Interpretations of the location of floodway and floodplain boundary lines may be made by the city planner. Ord. 427-AC

Sec. 95.03. Requests to be heard expeditiously. The planning commission and city council shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice, and obtain the necessary information to make sound decisions. Ord. 427-AC

Sec. 95.04. Burden of proof in appeals and variances. (a) When an appeal is taken to the planning commission in accordance with Section 95.00, the city planner shall have the initial burden of presenting to the body sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument for the appeal then shifts to the appellant, who shall also have the burden of persuasion.

b) The burden of presenting evidence sufficient to allow the planning commission or city council to reach the conclusions set forth in section 95.01 (b), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance. Ord. 427-AC

Sec. 95.05. Action on appeals and variances. (a) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of specific reasons or findings of facts that support the motion, if a motion to reverse or modify is not made or fails to receive the majority vote necessary for adoption.

(b) Before granting a variance, the body must take a separate vote and vote affirmatively on each of the six (6) required findings stated in section 95.01(b). Insofar

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as practicable, a motion to make an affirmative finding on each of the requirements set forth in section 95.01(b) shall include a statement of the specific reasons or findings of fact supporting such motion.

(c) A motion to deny a variance may be made on the basis that any one (1) or more of the six (6) criteria set forth in section 95.01(b) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. Ord. 427-AC