
Sec. 38-95. Variances.

- (a) The planning and zoning commission may recommend to the city council a variance from this article when, in its opinion, undue hardship will result from requiring strict compliance. The only variance that cannot be granted will be in the area of paving, curb and gutter for subdivisions located within the city limits. Variances from the paving, curb and gutter requirements hereunder may be recommended by the planning and zoning commission and granted by the city council for subdivisions located outside the city limits, but within the statutory extraterritorial jurisdiction of the city. All plats submitted must conform to the requirements of this article.
- (b) Any variances requested must be submitted in writing by separate instrument at the time the preliminary plat is filed with the planning and zoning commission. In recommending a variance, the planning and zoning commission and the city council shall prescribe only conditions deemed necessary or desirable in the public interest. In making the finding herein below required, the planning and zoning commission and the city council shall take into account the nature of the proposed uses of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such variance upon traffic conditions and on the public health, safety, convenience and welfare in the city.
- (c) No variance shall be approved unless the planning and zoning commission and the city council find:
 - (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of his land.
 - (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
 - (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area.
 - (4) That the granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provision of this article. Such finding of the planning and zoning commission, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the planning and zoning commission meeting at which such variance is recommended. Variances may be recommended only when in harmony with the general purpose and intent of this article so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.
 - (5) Nothing in this section shall prohibit a variance request being initiated or approved by the planning and zoning commission or the city council upon its own motion and upon a showing of special circumstances or conditions existing in the immediate vicinity of the land involved such that the strict application of the provisions of this article would be to the detriment of the general health, safety, and welfare of the citizens of the city as they are related to the areas of traffic movement, utility extension, fire and police protection, and storm sewer and drainage installation.
 - (6) All variances must be submitted to the city council for approval or disapproval. A vote of four-fifths of the city council shall be required to override a recommendation for or against a variance from the planning and zoning commission. In granting a variance, the city council shall comply with the provisions of this section.
 - (7) A variance shall cease upon change of ownership or use.

(Ord. No. 337-A, § 4.25, 5-9-2006)