



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Attorney	Nina P. Williams - City Attorney	November 1, 2022

ITEM

Ordinance 2022-19, Second reading and public hearing for proposed amendments to the Land Use Code Section 16-4-180 related to zoning variances. The public notice was not published in the newspaper at least fifteen (15) days in advance of the November 1, 2022 hearing. Therefore, the second reading and public hearing needs to be continued to November 15, 2022.

BACKGROUND

Over the past couple of years, the Planning Commission has expressed their desire to update the Land Use Code Sec. 16-4-180, regarding Zoning variances. The Planning Commission, staff and City Attorney held a work session on August 9, 2022 to discuss amendments to the zoning variances section of the Code.

At the work session the Commission expressed the need to make current Section 16-4-180(e), "Required Showing for Variances," provide for more clarity for property owners and applicants. Additionally, there was a desire for the Board of Adjustment, as the quasi-judicial arbiter of variance applications, to have more direction and certainty regarding their decisions. Within the attached Ordinance are the proposed amendments to Chapter 16 of the Code, as it relates to zoning variances and the variance approval criteria.

FISCAL NOTE:

There is no fiscal impact associated with Ordinance No. 2022-19.

PLANNING COMMISSION RECOMMENDATION

A public hearing with the Planning Commission was held September 26, 2022 and the Commission recommended adoption of the proposed Amendments to Land Use Code Sec. 16-4-180 Zoning Variances.

STAFF RECOMMENDATION Staff recommends approval of Ordinance No. 2022-19.

SUGGESTED MOTION

A City Councilmember should state, "I move to continue the public hearing and second reading of Ordinance 2022-19 to November 15, 2022.", followed by a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 19
(Series of 2022)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,
COLORADO AMENDING CHAPTER 16, ARTICLE IV OF THE SALIDA MUNICIPAL
CODE, REGARDING ZONING VARIANCES**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the State of Colorado;

WHEREAS, pursuant to C.R.S. § 31-23-301 *et seq.*, the City, by and through its City Council, possesses the authority to adopt and enforce zoning regulations;

WHEREAS, under such authority, the City Council previously adopted regulations related to zoning variances, codified as Chapter 16, Article IV and Section 16-4-180 of the Salida Municipal Code (the “Code”);

WHEREAS, the Planning Commission, acting as the City’s Board of Adjustment, has expressed the desire and recommendation to update and amend Chapter 16 of the Code, as it relates to zoning variances, in order to ensure more substantive clarity to property owners as well as enhanced procedural certainty and direction to the Board of Adjustment;

WHEREAS, on September 26, 2022 the Planning Commission held a duly-noticed public hearing and recommended adoption of this proposed ordinance;

WHEREAS, the City Council finds it desirable and appropriate, and in the best interest of the general health, safety, and welfare of its residents, property owners, visitors and customers to amend Section 16-4-180 of the Code, as it relates to zoning variances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE
CITY OF SALIDA, COLORADO AS FOLLOWS:**

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

Section 2. Section 16-4-180 of the Code, concerning zoning variances, is hereby amended to read as follows:

Sec. 16-4-180. – Zoning variances

- (a) Purpose. **The variance procedure provides authorization to deviate from the literal terms of this Chapter where strict application and enforcement of this Chapter would result in exceptional practical difficulty or undue hardship preventing the use of the land as otherwise allowed by this Chapter.** ~~Variances are authorization to deviate from the literal terms of this Land Use Code that would not be contrary to the public interest in~~

~~cases where the literal enforcement of the provisions of this Land Use Code would result in undue or unnecessary hardship.~~ A variance shall not be granted solely because of the presence of nonconformities in the zone district or adjoining districts.

- (b) Variances Authorized. Variances from the standards of the underlying zone district shall be authorized only for maximum height, minimum floor area, maximum lot coverage, ~~maximum~~ **minimum** lot size, minimum setbacks and parking requirements.
- (c) Administrative Variances. Because the development of much of historic Salida preceded zoning, subdivision and construction regulations, many buildings within the older neighborhoods of the City do not conform to contemporary zoning standards. In order to encourage restoration and rehabilitation activity that would contribute to the overall historic character of the community, variances from underlying zoning requirements for side and front setbacks may be granted by the Administrator under the following circumstances:
 - (1) Existing Primary Structure. The Administrator may grant a variance from a setback requirement for an addition to a primary structure if it continues the existing building line. The Administrator shall only consider allowing the encroachment into the setback if it can be shown that maintenance of the building addition can be provided on the subject property and that it is not injurious to adjacent neighbors.
 - (2) Traditional Neighborhood Setbacks. The Administrator may grant a variance from a front setback requirement for a primary structure if the neighboring properties encroach into the front setback. The variance shall not permit the structure to encroach further into the front setback than the neighboring primary structures. The Administrator shall only consider allowing the encroachment into the setback if it can be shown that such encroachments are the existing development pattern of the block on which the subject property is located and that the encroachment would not be injurious to adjacent neighbors.
- (d) Use Variances Not Authorized. Establishment or expansion of a use otherwise prohibited in a zone district shall not be allowed by variance.
- (e) ~~Required Showing for Variances. The applicant shall demonstrate the following to the Board of Adjustment before a variance may be authorized:~~

Variance Approval Criteria. Variances from requirements of this Chapter shall be considered an extraordinary remedy. When considering, reviewing and deciding on whether to approve a variance application, the Board of Adjustment must find that all of the following criteria have been met:

- (1) **Special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property. Special circumstances include, but are not limited to, exceptional or peculiar limitations to the dimension, shape or topography of the property, such as slope, standing or moving water, wetlands, floodplain, rock features, narrowness, shallowness or irregular shape of a lot.**
- (2) **The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.**

(3) The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

(4) The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

~~(1) Special Circumstances Exist. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood;~~

~~(2) Not Result of Applicant. The special circumstances and conditions have not resulted from any act of the applicant;~~

~~(3) Strict Application Deprives Reasonable Use. The special circumstances and conditions are such that the strict application of the provisions of this Chapter would deprive the applicant of reasonable use of the land or building;~~

~~(4) Variance Necessary to Provide Reasonable Use. The granting of the variance is necessary to provide the applicant a reasonable use of the land or building;~~

~~(5) Minimum Variance. The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building;~~

~~(6) No Injury to Neighborhood. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment; and~~

~~(7) Consistency With Code. The granting of the variance is consistent with the general purposes and intent of this Land Use Code.~~

(f) Authorization to Impose Conditions. The Administrator, in approving an administrative variance, or the Board, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the City. All conditions imposed upon any variance shall be set forth in the granting of such variance.

Section 3. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this ___ day of _____, 2022, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ___ day of _____, 2022, and set for second reading and public hearing on the ___ day of _____, 2022.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on this ___ day of _____, 2022.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk/Deputy City Clerk