

VARIANCE vs WAIVER

Request	Code	Public Hearing	Final Action
Variance	Zoning	Yes	Board of Adjustment
Waiver	Development	No	Planning Commission

VARIANCE

Definition

A device which grants a variation from the literal provisions of the Zoning Ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration.

Zoning Code
Sec. 301.10 Variances

Code

Zoning Code

Public Hearing

Yes

Decision Maker

Board of Adjustment

WAIVER

Code

Development Code

Public Hearing

No

Decision Maker

Planning Commission

Definition

Permission from the Planning Commission to depart from the requirements of the Land Development regulations.

Land Development Code
Sec. 300.04 Waivers

The applicant must show that conditions on the property present a hardship that makes it difficult to meet the Zoning Code regulations.

Variances for land uses are prohibited.

Board of Adjustment is the final-decision maker for variances. City Council does not review variances.

The applicant must show that the strict interpretation of the Land Development Code causes an applicant to incur undue restrictions on the physical property to be developed.

Waivers are not to be granted based strictly on financial hardship or for emotional reasons.



Planning Commission is the final decision-maker for waivers. City Council does not review waivers.



Zoning: VARIANCE

Variance Process

- 1 Application** The property owner must submit an application in [eTRAKIT](#) to request a variance.
- 2 Notification**

 -  7 days prior to the meeting, the city will publish a notice in the Democrat Gazette.
 -  7 days prior to meeting, the city posts a public hearing sign on the property.
- 3 Staff Report** Planning staff will prepare a report to the Board of Adjustment providing the details of the request.
- 4 Public Hearing** At a regularly scheduled meeting, the Board of Adjustment will hold each public hearing separately. Those interested in speaking on the item can approach the podium, state their name and address and provide comments. Once the public hearing is closed, further public comment is not accepted. See [Public Hearing Guide](#).
- 5 Board of Adjustment Action** The Board of Adjustment may discuss the item and ask questions of the applicant. A member may make a motion. If followed by a second to the motion, the item will be voted upon. The motion can be to approve, approve with conditions, deny or table. Board of Adjustment takes final action on variances.

Board of Adjustment takes final action on a variance.

Common Variance Requests

setbacks
lot size
signs
design

Applicants must show that conditions on the property present a hardship that makes it difficult to meet the regulations.

Variance Decisions

The Board of Adjustment will review the proposed request using these criteria:

- The applicant has demonstrated the following:
 - Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district.
 - The literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.
 - Special conditions and circumstances do not result from the actions of the applicant.
 - Granting the variance does not give the applicant any special privilege.
- Nearby nonconformities cannot be a justification for granting a variance.
- The variance is the minimum variance that will make possible the reasonable use of land, building or structure.
- Granting the variance will be in harmony with the general purpose and intent of the Code and will not be detrimental to the public welfare.

Development: WAIVER

Waiver Process

- 1 Application** The property owner must submit an application in [eTRAKIT](#) to request a waiver or submit a written petition with a large scale development or preliminary plat application.
- 2 Staff Report** Planning staff will prepare a report to the Planning Commission providing the details of the request.
- 3 Planning Commission Action** The Planning Commission may discuss the item and ask questions of the applicant. If the item is part of a large scale development or preliminary plat, the waiver will be discussed and addressed first. A member may make a motion. If followed by a second to the motion, the item will be voted upon. The motion can be to approve, approve with conditions, deny or table. Planning Commission takes final action on waivers.

Planning Commission takes final action on a waiver.

Common Waiver Requests

- parking requirements
- right-of-way dedication
- design standards

Waivers are not to be granted based strictly on financial hardship or for emotional reasons.

Waiver Decisions

The Planning Commission will review the proposed request and will only approve if finding all four of the following:

- That there are special circumstances or conditions affecting the land involved such that the strict application of the provision of these regulations would unreasonably affect the applicant.
- That the waiver is not in conflict with the overall goals of the City in adopting these regulations.
- That the granting of the waiver will not be detrimental to the public health, safety and welfare or injurious to other property in the area.
- That the granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accord with the provision of these regulations.