

CHAPTER 12

VARIANCES

SECTION:

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10-12-1 **VARIANCES:** The Commission shall initially review applications for variances. The Commission may authorize in specific cases such variances, as herein defined, from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. Existing non-conforming use of neighboring lands, structures, or buildings in the same district and existing permitted or non-conforming use of lands, structures or buildings in other districts shall not be grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance would result in unnecessary hardship.

10-12-2 **APPLICATION AND STANDARDS FOR VARIANCES:** A variance from the terms of this Ordinance shall not be granted by the Commission unless and until a written application for variance is submitted to the City Clerk and the Commission containing:

- (A) Name, address and phone number of applicant;
- (B) Legal description of property;
- (C) Description of variance requested; and
- (D) A statement demonstrating that the requested variance conforms to the following standards:
 - (1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - (2) That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by the other properties in the same district under the terms of this Ordinance; and

- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to the other lands, structures or buildings in the same district.

A variance shall not be granted unless the Commission makes specific findings of fact based directly on the particular evidence presented to it which supports conclusions that the above standards and conditions have been met by the applicant.

10-12-3 VARIANCE PROCEDURE:

- (A) Upon receipt of an application for variance, the Commission shall allow all affected persons an opportunity to be heard. At least seven (7) days prior to said opportunity, the applicant for a variance shall notify all property owners adjoining the parcel under consideration.
- (B) No later than the next regular meeting after consideration of a variance request, the Commission shall approve, conditionally approve or disapprove the variance. Upon granting or denying a variance, the Commission shall specify.
 - (1) The Ordinance section (s) or standard used in evaluating the variance request; and
 - (2) The reasons for approval or denial.
- (C) The applicant or any affected person may appeal the decision of the Commission to the City Council by delivering written notice of the appeal to the City Clerk within thirty (30) days following the Commission's decision. To the extent the appeal procedures of this Chapter 12 do not conflict with the appeal procedures of other actions by the Commission, the procedures of this Chapter 12 shall apply.

10-12-4 APPEAL TO THE CITY COUNCIL: Upon receipt of an appeal from an action of the Commission relating to administrative appeal or variance, the City Council shall set a date to consider all information, testimony and Commission minutes concerning the application to reach a decision to uphold, conditionally uphold or overrule the decision. The City Council shall only overrule the Commission by majority vote. In addition, the Council may hold a public hearing and make its own decision in the matter.

10-12-5 NOTIFICATION OF APPLICANT: The administrator will provide the applicant with written notice of the time and place set by the City Council to hear the appeal or conduct additional public hearing on the appeal. Within ten (10) days after a decision has been rendered, the Administrator shall provide the applicant with written notice of the action on the administrative appeal to the City Council.

10-12-6 JUDICIAL REVIEW: An affected person aggrieved by a decision of the City Council may within thirty (30) days, after a decision of the City Council seek judicial review under the procedures provided by Idaho Code Section 67-5215 (b) through (g) and Idaho Code Section 67-5216.

