

## **7.5.802: NONUSE VARIANCES:**

A. Authorization: Subject to the requirements of this part and this Zoning Code, nonuse variances are hereby authorized.

B. Criteria For Granting: The following criteria must be met in order for any nonuse variance to be granted:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and
2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief; and
3. That the granting of the variance will not have an adverse impact upon surrounding properties.

Nonuse variances to the parking and storage regulations (article 4, part 2 of this chapter) and to the sexually oriented business separation requirements (part 13 of this article) are subject to additional criteria set forth in subsections C and D of this section.

C. Additional Criteria For Sexually Oriented Business Separation Requirements<sup>1</sup>:

1. Criteria: A variance to the separation requirements set forth in this Zoning Code may be granted if the presumptions in this Zoning Code are overcome by proof that the establishment of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business establishment, or establishment of a sexually oriented business within one thousand feet (1,000') of any residential zoning district, residential use, park, church or educational institution, as applicable, will not have a deleterious effect on surrounding residential and business areas by creating blight, downgrading of property values or tending to cause an increase in crime.
2. Conditions: In granting a variance to the distance requirements set forth in this Zoning Code the Planning Commission or City Council may impose reasonable conditions relating to hours of operation, screening, buffering and signage as long as the conditions imposed are not designed to prohibit the dissemination of protected materials under the first amendment to the United States Constitution.

D. Additional Criteria And Guidelines For Regulations Of Vehicle Parking And Storage<sup>2</sup>:

1. Criteria: In addition to the criteria listed in subsection B of this section, nonuse variances to the regulations regarding vehicle parking and storage listed in this Zoning Code must also meet the following criteria:
  - a. The proposed location of the vehicle will not create a pedestrian or vehicular safety problem.

b. The granting of the variance will not have an adverse impact upon the surrounding properties or neighborhood.

2. Guidelines For Review Of Variances: As a guide to applying the criteria listed in this subsection, when applicable, the fact finder may, but is not required to, consider any or all of the following circumstances which have been established by the evidence in determining whether the applicable criteria have been met:

a. Pedestrian Or Vehicular Safety: The following traffic related factors shall be considered:

(1) The speed limit.

(2) Vehicular traffic volume.

(3) Pedestrian traffic volume.

(4) Sight distance.

(5) Physical design characteristics of the sidewalk and street.

b. No Adverse Impact:

(1) The granting of a variance shall not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character.

(2) The granting of a variance shall not be inconsistent with any plans adopted by the City.

(3) The granting of the variance shall not weaken the general purpose of this zoning ordinance or its regulations.

(4) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

(5) Visual barriers may be existing on site, or proposed by the applicant, such as vegetation, opaque walls or fencing which have a positive effect toward screening of the vehicle.

E. Guidelines For Review Of A Nonuse Variance: As a guide to applying any of the criteria for nonuse variance applications listed in subsection B, C, or D of this section, when applicable, the fact finder may, but is not required to, consider any or all of the following circumstances which have been established by the evidence in determining whether the applicable criteria have been met:

1. Extraordinary Or Exceptional Physical Conditions:

a. The physical conditions of the property shall not be conditions general to the neighborhood or surrounding properties.

b. The unique physical conditions of the property may be its size, shape, location, topography, soils; or

- c. The unique physical conditions of the property may be the size or location of existing structures on the property if such structures are not self-imposed conditions; or
- d. The unique physical conditions may be certain on site or off site environmental features which may positively or negatively affect the property in question, including, but not limited to, adjacent land uses, traffic, noise, views and location of significant natural, architectural or historic features.

2. No Reasonable Use:

- a. The demonstrated extraordinary or exceptional physical conditions of the property must directly relate to the inability to reasonably use the property in conformance with the applicable zoning ordinance regulations.
- b. The concept of less reasonable use may be considered if a neighborhood standard exists and if it is demonstrated that the property in question has a less reasonable use by comparison with proximate and similar properties in the same zoning district.
- c. The purchase price of the property, the desire for greater economic return on investment or mere inconvenience do not constitute, by themselves, evidence of no reasonable use.
- d. Self-imposed conditions such as prior voluntary rezoning, platting, or building in violation of City codes and ordinances do not constitute evidence of no reasonable use.
- e. Knowledge, or lack of knowledge, of zoning restrictions and physical site constraints at the time the property is purchased is immaterial to evidence of no reasonable use of the property.

3. No Adverse Impact:

- a. The granting of a variance shall not be detrimental to public health, safety and welfare or injurious to surrounding properties.
- b. The granting of a variance shall not be inconsistent with any plans adopted by the City.
- c. The granting of a variance shall not weaken the general purpose of this Zoning Code or its regulations.
- d. The variance, if granted, shall only be to the extent necessary to afford a reasonable use of property.

F. Application And Process: An application for a nonuse variance shall include the following:

- 1. A preapplication conference with the Community Development Department staff prior to submittal of the application,
- 2. An application for a nonuse variance shall be filed with the Community Development Department in a manner consistent with the requirements contained in part 2 of this article and include all of the requirements noted in the development application and checklist, including a site plan and other associated documentation as required, and

3. The application shall be reviewed and an administrative decision rendered by Community Development Department staff unless the nonuse variance is submitted with another development application that is required to be decided upon by Planning Commission. Staff may refer a nonuse variance application to the Planning Commission if warranted. (Ord. 85-136; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 03-16; Ord. 09-80; Ord. 12-76)