

## Code Compliance Corner—April 2024

### **What are the differences between a zoning change, a variance and an exception?**

When a property owner comes into the city offices to seek one of these, they are frequently unclear as to what they are seeking to obtain. Here is a little background on these three options when one desires to get approval for a change in a land use or code requirement.

**Zoning Change:** The first option is to seek a zoning change, which is the most difficult to do. It can require substantial effort and expense. If you are looking for a zone change, your first step would be to come into the City offices and speak with our City Planner. After a public hearing and review by the Planning Commission, the ultimate decision to change a zoning law is a legislative decision and requires the approval of the City Council.

**Variance:** A variance is likely the 2<sup>nd</sup> most difficult to obtain. A variance grants a property owner the ability to use their property in a manner that is against the current zoning. A variance is a waiver a property owner can obtain to deviate from existing zoning laws. However, variances don't modify zoning laws and cannot be used to make a change in allowed uses in a particular zone. A variance is granted only when a property owner shows an undue hardship created by unique circumstances that the current or past property owner did not create. The law is very clear that if the hardship is created by the property owner, a variance should not be granted. An example of a self-created hardship would be if an owner purchased a property expecting to use or make improvements to the property contrary to the current zoning ordinance or building standards, which they knew or should have known through their due diligence, that the current zoning laws prohibit. In this example, the hardship would be considered self-created because the person knew or should have known of the zoning laws before buying the property. They created the hardship themselves when purchasing the property intending to use or to make the certain improvements to it outside the current zoning ordinances for that particular property. Ignorance of local zoning laws does not create undue hardships for property owners.

Variances are granted through an Administrative Hearing. A Hearing Officer can grant a variance only if the following conditions, as required by the State, are met:

- Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
- Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
- The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- The spirit of the land use ordinance is observed, and substantial justice done.

One key element of a variance is that once granted, it carries forth with the land and future landowners need not re-apply for a specific variance when purchasing a property.

For example, if a granted variance involved the construction of a structure, a future owner need not remove the structure when purchasing the property.

**Exception:** The last option would be to seek an exception, which is generally spelled out in the code with the requirement that it be reviewed by various public committees before an exception may be granted. Exceptions are minor changes to an incidental use of property or a dimensional requirement in the zoning ordinance. In general, an exception is applied when a proposed use aligns with the overall goals and objectives of the zoning ordinance but is not specifically permitted under the current code. If the code does not specify an exception to that rule can be granted, then it is not possible to be granted an exception without changing the language in the code to allow for a requested exception.

Remember, if you want to do something on your property that is not allowed by City Code you need to ask yourself the following: Are you requesting for an entirely separate use other than what your property is currently zoned for? This would be a zone change. Are you trying to solve a unique hardship that limits the use of your property? This would be a request for a variance. Are you seeking a specific solution for an incidental use of property or a dimensional requirement in a building standard? Then this would be an exception.