

#D-83 VARIANCE DECISION CRITERIA

General Description

This docket item proposes to amend one of the variance decision criteria in order to provide a more moderate threshold for allowing variances. Specifically, to amend the portion of criteria 'a' that reads "undue hardship", so that it reads "practical difficulties and unnecessary hardship".

Impact Analysis

Effect on rate of growth, development, and conversion of land as envisioned in the Plan

Not applicable. There are no anticipated effects on the rate of growth, development, and the conversion of land created by the proposed changes.

Effect on the City's capacity to provide adequate public facilities

Not applicable. There are no anticipated effects on the City's capacity to provide adequate public facilities created by the proposed changes.

Effect on the rate of population and employment growth

Not applicable. There are no anticipated effects on the rate of population and employment growth created by the proposed changes.

Whether Plan objectives are being met as specified or remain valid and desirable

The Comprehensive Plan Vision states, "On the broadest level, the City policies ensure that urbanization, economic development, and natural protection are balanced". This docket item proposes that the City move from the most restrictive threshold, in one of the criteria used in the consideration of a variance request, to a balanced approach bringing it more in line with this objective of the Plan.

Effect on general land values or housing costs

Not applicable. There are no anticipated effects on general land values or housing costs created by the proposed changes.

Whether capital improvements or expenditures are being made or completed as expected

Not applicable.

Consistency with GMA, the Plan, and Countywide Planning Policies

The proposed changes have no bearing on growth management. They are consistent with the Comprehensive Plan and Countywide Planning Policies.

Effect on critical areas and natural resource lands

The effects of this proposal are anticipated to have no impact on critical areas and natural resource lands.

Background

Variations allow for relief from the requirements of Title IV in order to permit construction in a manner that would otherwise be prohibited. They can be approved by either the Community and Economic Development Administrator (or designee) or by the Hearing Examiner, depending on what standard the applicant is seeking to vary from. Public notice and a comment period are required as part of the process.

Currently, Renton's decision criteria for allowing a variance sets a threshold that is the most restrictive standard available to the City. This is because of the use of the phrase "undue hardship" in criteria 'a' (shown below, emphasis added)

***"5. Decision Criteria:** Except for variances from critical areas regulations, the Reviewing Official shall have authority to grant a variance upon making a determination in writing that the conditions specified below have been found to exist:*

- a. That the applicant suffers undue hardship and the variance is necessary because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings of the subject property, and the strict application of the Zoning Code is found to deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and under identical zone classification;*
- b. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated;*
- c. That approval shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is situated;*
- d. That the approval as determined by the Reviewing Official is a minimum variance that will accomplish the desired purpose."*

The Renton Hearing Examiner, Phil Olbrechts, also serves as a Hearing Examiner for nine other jurisdictions. Of the jurisdictions he serves, there is only one other that uses this same "undue hardship" threshold, Mountlake Terrace. Phil interprets the use of "undue hardship" to indicate a low tolerance for variances. In Edmonds, Federal Way, Mason County, and San Juan County there is no specific hardship required. The cities of Port Townsend, Auburn, Fife, and Black Diamond use the phrase "practical difficulties and unnecessary hardship".

In most policies and standards set by the City, Renton seeks to be reasonable and moderate with the Development Standards. The tiered Temporary Use Permits, parking requirements, and political signs demonstrate moderate approaches that seek to be reasonable. There are also many ways in which the City has established approaches that allow applicants to seek alternatives to the prescriptive code. Examples include the Residential Design Standards, Design District Standards, and the Keeping of Animals. Crafting the Code in this fashion has allowed the City to provide an outlet for unanticipated circumstances. For example, the

Additional Animals Permit allows residents to demonstrate that their circumstance is different from the prescriptive Code and seek a resolution that is acceptable to both them and the City.

Staff recommends that the variance decision criteria be amended to be more reasonable and moderate in its approach. In the spectrum of variance criteria regarding hardships, not requiring any hardship is the least restrictive and undue hardship is the most restrictive. The use of “practical difficulties and unnecessary hardship” is moderate and is therefore staff’s recommended language. This language would allow variances when an applicant demonstrates they suffer a hardship that could be alleviated with a variance, but the hardship is unnecessary because granting a variance would remedy their hardship with no harm to others. Staff recommends the following amendment:

“5. Decision Criteria: *Except for variances from critical areas regulations, the Reviewing Official shall have authority to grant a variance upon making a determination in writing that the conditions specified below have been found to exist:*

- a. *That the applicant suffers ~~undue hardship~~practical difficulties and unnecessary hardship and the variance is necessary because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings of the subject property, and the strict application of the Zoning Code is found to deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and under identical zone classification;*
- b. *That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated;*
- c. *That approval shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is situated;*
- d. *That the approval as determined by the Reviewing Official is a minimum variance that will accomplish the desired purpose.”*