



# Plain Language Rewrite of Findings of Fact

Request to initiate an ordinance to amend Chapters 25-8 and 30-5 to improve and clarify the findings of fact for land use commission variances

## §25-8-42 – Variance Findings of Fact

- Current status
  - Outdated, vague language for findings of fact
    - E.g., the variance “is not based on a condition caused by the method chosen by the applicant to develop the property”
  - Difficult to interpret
- Proposal
  - Plain language rewrite to improve and clarify findings of fact
- Advantages
  - Variances can be processed more efficiently and effectively
  - Provide greater clarity and consistency of interpretation for applicants, public, and staff
- Disadvantages
  - Could affect what currently qualifies for a variance

# Questions?

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## Plain Language Rewrite of Findings of Fact for Land Use Commission Variances from §25-8 and §30-5

### Current Code

#### § 25-8-41 - LAND USE COMMISSION VARIANCES.<sup>1</sup>

- (A) It is the applicant's burden to establish that the findings described in this Section have been met. Except as provided in Subsections (B) and (C), the Land Use Commission may grant a variance from a requirement of this subchapter after determining that:
- (1) the requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development;
  - (2) the variance:
    - (a) is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;
    - (b) is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property; and
    - (c) does not create a significant probability of harmful environmental consequences; and
  - (3) development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.
- (B) The Land Use Commission may grant a variance from a requirement of Section 25-8-422 (*Water Quality Transition Zone*), Section 25-8-452 (*Water Quality Transition Zone*), Section 25-8-482 (*Water Quality Transition Zone*), Section 25-8-652 (*Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long*), or Article 7, Division 1 (*Critical Water Quality Zone Restrictions*), after determining that:
- (1) the criteria for granting a variance in Subsection (A) are met;
  - (2) the requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and
  - (3) the variance is the minimum change necessary to allow a reasonable, economic use of the entire property.
- (C) The Land Use Commission may not grant a variance from a requirement of Article 13 (*Save Our Springs Initiative*).
- (D) The Land Use Commission shall prepare written findings of fact to support the grant or denial of a variance request under this section.

Source: Section 13-2-505; Ord. 990225-70; Ord. 010607-8; Ord. 030508-60; Ord. 031211-11; Ord. 20131017-046; Ord. No. 20140626-113, Pt. 19, 7-7-14.

### Proposed Amendment

The current findings of fact for land use commission variances are vague and difficult to interpret. Staff is proposing a plain language rewrite in order to improve and clarify the findings. The purpose of the proposed amendment is to improve the transparency, efficiency, and effectiveness of the variance process. The general intent is to provide greater clarity, understanding, and consistency of interpretation for applicants, the public, and staff.

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<sup>1</sup> Section 30-5-41 is the same as Section 25-8-41, with the exception of the code sections referenced in Subsection (B).