

Sec. 86-46. Variances.

- (a) *Procedure and conditions for granting variances.* A variance from the terms of this chapter shall not be granted by the planning commission unless and until:
- (4) *Considerations in granting.* The planning commission shall, based upon substantial and competent evidence, make an affirmative finding on each of the following in granting a variance petition:
- a. Special circumstances exist in relation to the land, structures or buildings as compared to other land, structures or buildings in the same zoning district and the special circumstances are not the fault of the applicant;
- Delays in implementation of updates to the Land Development Regulations following the 2010 Comprehensive Plan update and the ongoing efforts to update the Land Development Regulations following 2017 Comprehensive Plan update, special circumstances which are not the fault of the applicant, have resulted in a partially updated Land Development Code which changed the point to where height is measured (peak of roof) without completing the update to the Land Development Code to adjust allowable building heights accordingly to 42'.**
- Note: The Land Development Regulations update has recently been completed, but this application was in process prior to completion of the Land Development Regulation update and, therefore, is being processed under the prior code requirements.**
- b. The literal interpretation of the provisions of this chapter would result in unnecessary and undue hardship to the property;
- The literal interpretations of this chapter would result in unnecessary and undue hardship to the property by limiting the applicant's ability to construct buildings in excess of two stories.**
- c. The variance, if granted, is the minimum variance necessary to meet the requested use of the land, building or structure; and
- The variance request for 42', including parking, is the minimum variance necessary to allow for the construction of three-story buildings and would result in an overall reduction in height from the currently permitted height of 35' over 10' of understructure parking (total of 45').**
- d. The grant of the variance will be in harmony with the general intent and purpose of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- The grant of the variance will be in harmony with the general intent and purpose of this chapter which is to allow for construction of three-story buildings. Three story buildings will not be injurious to the neighbors or otherwise detrimental to the public welfare**