ORDINANCE No. 118727

COUNCIL BILL No. 111858

INDEXED

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AN ORDINANCE relating to land use and zoning, amending Section 23.40.020 of the Seattle Municipal Code to amend the criteria for review of variances from Land Use Code requirements.

Honorable President:

Your Committee on

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COMPTROLLER FILE No.

Introduced: SEP 2 1997	By: DRAGO
Referred: SEP 2 1997	To: Business, Economic & Community Development
Referred:	To:
Referred:	To:
Reported: 9-22-97	Second Reading:
Third Reading: 9-22-97	Signed: 9-22-97
Presented to Mayor: 9-22-97	Approved: SEP 29 1997
Returned to City Clerk: SEP 29 1997	Published: Full 2M
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Notes:

SMEAD 46 VSF 17703

Law Department

ED

The City of Seattle--Legislative Department

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REPORT OF COMMITTEE

Date Reported and Adopted

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that we have considered the same and respectfully recommend that the same:

Do Pass 3-0

2291 Full Council Action: Pass 9-0

Committee Chair

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ORDINANCE 118727

AN ORDINANCE relating to land use and zoning, amending Section 23.40.020 of the Seattle Municipal Code to amend the criteria for review of variances from Land Use Code requirements.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.40.020 of the Seattle Municipal Code, which was last amended by Ordinance 117570, is amended to read as follows:

A Variances may be sought from the provisions of Subtitle IV, Parts 2 and 3 of this Land Use Code, as applicable , except for the establishment of a use which is otherwise not permitted in the zone in which it is proposed, for maximum height which is shown on the Official Land Use Map, from the provisions of Section 23,55,014 A, or from the provisions of Chapter 23.52. applications for prohibited variances shall not be accepted for filing.

B. Variances shall be authorized according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions.

C. Variances from the provisions or requirements of this Land Use Code shall be authorized ((~~only~~)) when all the ((~~following~~)) facts and conditions listed below are found to exist((~~:~~)).

1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and

3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and

4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use code would cause undue ((~~and unnecessary~~)) hardship or practical difficulties; and

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan, as applicable.

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D. In order to qualify for a variance under the foregoing criteria, an applicant need not demonstrate that, absent the variance, he or she would have no reasonable economic use of the property at issue.

E. When a variance is authorized, conditions may be attached regarding the location, character and other features of a proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this Land Use Code.

Section 2. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten(10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 22nd day of Sept, 1997, and signed by me in open session in authentication of its passage this 22nd day of September, 1997.

President of the City Council

Approved by me this 29th day of September, 1997.

Norman B. Rice, Mayor

Filed by me this 29 day of September, 1997.

City Clerk

(Seal)

Published_____

Seattle
Department of Construction and Land Use

R. F. Krochalis, Director
Norman B. Rice, Mayor

TO: Councilmember Jan Drago, Council President
Via Judy Bunnell, Acting Director, Office of Management and Planning

FROM: Judith Nitle for Rick Krochalis, Director

DATE: August 15, 1997

SUBJECT: Proposed Legislation Amending Land Use Code Variance Criteria

The attached legislation is recommended to clarify the circumstances in which a variance may be granted. The long-standing policy of the City has been to grant such relief from Land Use Code development standards when a property owner could demonstrate that a hardship would result from strict application of the Land Use Code's requirements, depriving a property owner of the rights and privileges enjoyed by other property owners in the vicinity. In addition, the property owner was subjected to a rigorous evaluation of four other criteria, all of which must be met. These criteria include consistency with the spirit and purpose of the Land Use Code, and applicable land use policies and the Comprehensive Plan. In addition, a proposed variance cannot go beyond the minimum necessary to afford relief and not be a grant of special privilege. Granting of the variance must also not be materially detrimental to the public welfare or injurious to other nearby properties.

In a recent decision by the State Court of Appeals, the Land Use Code criterion which requires proof of an undue and unnecessary hardship has been interpreted to mean that no reasonable use or economic return from a property is possible without the requested variance. This interpretation is inconsistent with the intent of the criterion as it has been applied by the City in the past. The Court has specifically referred to this criterion and suggested that if it were to mean what we intended it to mean we should refer to "practical difficulties" as opposed to "unnecessary hardship." We have, therefore, determined that an amendment to the Land Use Code is necessary.

The amendment is the minimum necessary to address the issues raised by the Court of Appeals. It is intended only to ensure that the future exercise of discretion with regard to variance relief from the Land Use Code is reasonable and based upon the circumstances of a given property. It is not intended to substantively change how the department reviews variance requests. Nor is it intended to confer upon anyone exceptional rights to disregard the reasonable limits placed on property development. If it were necessary for a property owner to prove that he or she would have no economically viable use of the

entire property absent the variance, it is likely many minor area variances that cause no harm to the public would have to be denied. The hardship that would result is likely to be substantial for single family property owners, whose requests for variances, for the most part, do not generate substantial opposition. Traditionally, variance relief allows single family homeowners, who request the majority of variances, the opportunity to enjoy their home and property in a manner enjoyed by and respectful of their neighbors and frequently reduces costs associated with homeownership and home improvement.

Environmental review of the proposed amendment was required by Seattle's Environmental Policy Act (SEPA) and a determination of non-significance was issued (no Environmental Impact Statement required). The environmental determination is appealable until August 28, 1997. Environmental documentation is available upon request.

The amendment will have negligible fiscal impact. The one-time only costs associated with the amendment will be for copying and codifying the ordinance.

The legislation is being sponsored by Councilmember Jan Drago, who has scheduled a public hearing before her Business, Economic and Community Development Committee on September 16, 1997.

Opportunity for review by the public is coincident with notification of the Council's public hearing. The public is afforded thirty days notice and the opportunity to testify before the Council. It is necessary to move this issue forward and bring it before Council in a timely manner because applications for variances are ongoing and the effect of the Court's decision must be weighed in deciding the outcome of each application. The sooner the issue is resolved, the greater the likelihood that property owners will be treated consistently and fairly and in accordance with long-standing practice and policy.

If you have any questions about the proposed amendments, please call John Skelton at 233-3883 or Bryan Glynn at the City's Law Department, 684-8602.

97-223

City of Seattle

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SEATTLE CITY ATTORNEY

Norman B. Rice, Mayor
Executive Department - Office of Management and Planning
Judy Bunnell, Director

August 15, 1997

OK
7/18/97

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT:	Contruction and Land Use
SUBJECT	AN ORDINANCE relating to land use and zoning, amending Section 23.40.020 of the Seattle Municipal Code to amend the criteria for review of variances from Land Use Code requirements.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Pascal St. Gerard at 684-8085.

Sincerely,

Norman B. Rice
Mayor

by

JUDY BUNNELL P St. Gerard for
Director

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Enclosure

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Lou Drago

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

_____

_____

_____

PRESIDENT'S SIGNATURE

C. S. 20.28

City of Seattle

ORDINANCE 118727

AN ORDINANCE relating to land use and zoning, amending Section 23.40.020 of the Seattle Municipal Code to amend the criteria for review of variances from Land Use Code requirements.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SECTION 1. Section 23.40.020 of the Seattle Municipal Code, which was last amended by Ordinance 117570, is amended to read as follows:

A. Variances may be sought from the provisions of Subtitle IV, Parts 2 and 3 of this Land Use Code, as applicable, except for the establishment of a use which is otherwise not permitted in the zone in which it is proposed, for maximum height which is shown on the Official Land Use Map, from the provisions of Section 23.55.014 A, or from the provisions of Chapter 23.52, applications for prohibited variances shall not be accepted for filing.

B. Variances shall be authorized according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions.

C. Variances from the provisions or requirements of this Land Use Code shall be authorized ((only)) when all the ((following)) facts and conditions listed below are found to exist ((:)).

1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and

3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and

4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue ((and unnecessary)) hardship or practical difficulties; and

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan, as applicable.

D. In order to qualify for a variance under the foregoing criteria, an applicant need not demonstrate that, absent the variance, he or she would have no reasonable economic use of the property at issue.

E. When a variance is authorized, conditions may be attached regarding the location, character and other features of a proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this Land Use Code.

Section 2. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 22nd day of September, 1997, and signed by me in open session in authentication of its passage this 22nd day of September, 1997.

JAN DRAGO,
President of the City Council.

Approved by me this 29th day of September, 1997.

NORMAN B. RICE,
Mayor.

Filed by me this 29th day of September, 1997.

(Seal) JUDITH E. PIPPIN,
City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

((**Boldface denotes deletion**))

Date of official publication in Daily Journal of Commerce, Seattle, October 7, 1997. 10/7(85540)

Affidavit of Publication

ATE OF WASHINGTON - KING COUNTY

City Clerk —ss.

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118727

was published on
10/07/97

The amount of the fee charged for the foregoing publication is the sum of $, which amount has been paid in full.

Subscribed and sworn to before me on 10/07/97

Notary Public for the State of Washington,
residing in Seattle