

Variance Process

for Certain HG Governing Documents

The purpose of this document is twofold: (1) to *generally* address the variance process and (2) to document the boundaries the Board sees with variance administration.

The purpose of the Heritage Grand (HG) Homeowners Association (HGHOA, HOA) is to "protect the value and desirability" of our real property. To assist in attaining this purpose, HG has generated and published rules and regulations (R&Rs) and policies to define necessary community-wide standards.

Notes:

1. A "**Variance**" is a Board-approved dispensation from a specific Board-approved rule.

The term "*rule*" includes rules and regulations, use restrictions and policies enacted and amended by the Board. Rules are constraints on all members of the association that supplement the Declaration. Legally *enforceable* rules must have previously been filed with Fort Bend County.

Since the Board's authority is subservient to the Texas Property Code (work product of the Texas Legislature) and the Declaration (modified only by homeowner vote or the TPC), it has no authority to issue variances to these documents.

Wording from the Declaration concerning variances:

- a) "No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration; or (c) estop the reviewer from denying a variance in other circumstances."
- b) "... the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance."

Additional specifics:

Any variance granted shall apply only to the requesting homeowner. The variance shall not transfer to a new owner and shall be considered null and void when the property is sold or otherwise transferred.

Documentation of active, approved variances shall be retained in our HOA property records.

2. If the Board agrees that a Rule's wording should be modified as a result of a variance request process, an *Interim Variance* may be issued, if desired, to allow homeowner action between the time of the Board decision and the actual completion of the Rule change filing.

All interim variances become null when the rule modification process is completed and filed.

3. "Guidelines" are non-county-filed documentation that describes considerations used in administration of HGHOA. Guidelines do not address issues homeowners are be required to comply with. Variances do not apply to guidelines.

Variance Specifics

Homeowners may at any time request variances from Board-approved rules, but Board expectations are that variances are unlikely to be granted except in very limited circumstances where an individual has a clear "special case" situation. "Personal preference" of a homeowner is insufficient justification for variances being approved. A more typical response to Board-supported requests is rule wording modifications. The following describes the *expected* process for variance requests and also considerations the Board considers in addressing variance requests.

1. **Variance Initiation** –Variance requests will be an agenda-documented item presented in open session of a regular Board meeting. (Actions *may* occur due to a homeowner's uncontrolled timing constraint request that is accepted by the Board, or other Board-accepted situations.) Variance requests must be submitted in writing and including helpful specifics.

2. **Review of the Rule involved** - Since all Rules have been created believing to be beneficial to the Heritage Grand community, there should be careful consideration in the granting of any Variance.

This Variance Process expects that the Rule involved be reviewed to determine if the Rule is necessary, properly worded, and benefits the Community before further acting on any variance request.

No variance shall be granted that has a negative impact on the Community either in property value or is anticipated to create Community strife.

3. **Criteria for Granting a Variance**

The most anticipated reason for granting a variance is for specific rules dispensation to address American Disabilities Act implementation (or similar needs) for a specific homeowner.

A record of Board members voting for or against the variance shall be kept in the Board minutes.

This Board-owned guideline was ratified by a majority of the Board on 8/4/20.

/Lucy/
Board Secretary

BOARD AUTHORITIES AND LIMITATIONS WHEN ADDRESSING VARIANCE REQUESTS

Board Authority – The Declaration (Article VI, Section 1) states the following:

*"the Board of Directors **may**, from time to time, in its sole discretion and without consent of the members, promulgate, modify, or delete use restrictions and rules and regulations... binding upon all Owners... unless overruled, canceled, or modified in a regular or special meeting... by vote of a Majority of the total votes in the Association..."*

Action Constraints – In the implementation of HOA governance, Heritage Grand obeys the Texas Property Code:

*"An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable **unless** the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory." [TPC Sec. 202.004(a)]*

Definitions of the above-underlined words add clarity:

- **"Discretion"** is defined as "the freedom or authority to make decisions and choices; power to judge or act"
- **"Arbitrary"** means "random, by chance, uninformed"
- **"Capricious"** means "unpredictable, impulsive, unreliable, erratic"
- **"Discriminatory"** means "biased, unfair, inequitable"