

Standards for Granting a Deviation

1. *The petitioner has shown that strict adherence to the provisions of this Title would cause unnecessary hardship due to conditions which are unique to the site and not caused by the owner or petitioner; and*

The petitioner's request to pay the school and park land cash fees at the time of building permit issuance is commensurate with the timing when the actual construction will take place. Requiring payment of the school and park land cash fees at the time of recording of the final plat is unnecessary and could create a significant hardship and loss to the petitioner. Construction will not occur for several months after the final plat is recorded and until a building permit is issued, so requiring payment so early in advance construction is risky to the petitioner. This is primarily because the City does not allow for refunds of school and park land cash fees. Therefore, to require thousands of dollars be paid to account for anticipated future impact to the school and park districts long before construction is even started is not equitable. In the event the building was never constructed because a building permit was not granted in the future, then there would be no impact to the school or park district, but the developer would be out significant funds which were required to be paid at the time of final plat. The more equitable alternative is to require payment of school and park land cash fees when a building permit is obtained which is closer to when construction will actually begin. The most logical time to collect land cash fees would be when an occupancy permit is issued which is consistent when the impact will be realized by the school and park district.

2. *The requested subdivision deviation is not contrary to the intent and purpose of the provisions of this Title.*

The requested deviation to pay the land cash fees at the time of building permit issuance is consistent with the intent of the land cash ordinance. Both the school and park districts will be financially compensated over and above the annual additional real estate tax revenue per the land cash ordinance. The only difference will be that the payment will be made at the time of building permit issuance instead of at the time of recording the final plat both of which are actually long before the impact is actually realized because the homes will take over a year to build and no people or students will be produced until an occupancy permit is issued.