



VARIANCE PROCEDURE, INFORMATION AND CHECKLIST

A variance is a way that cities may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply. Please note: Sometimes a landowner seeks a variance to allow a **use** of their property that is not permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. *State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located (Minn. Stat. § 462.357, subd. 6).*

Chapter 150.285

1. Variances shall not create a use not provided for in a zoning district.
2. Variances shall be issued to the property and are not transferable.
3. Variances shall be issued to the property for structures or other specified uses only after a public hearing and approval by the Board of Adjustment. All applications for a variance shall be submitted to the Zoning Administrator 30 days ahead of the hearing date, accompanied by a certificate of survey (unless waived by the Zoning Administrator) showing the details of the proposal and an accurate legal description, along with the appropriate fee. The fee or contract owner of the property shall sign the application. The Zoning Administrator shall notify all property owners within a minimum of 350 feet by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least ten days ahead of the public hearing. The Zoning Administrator shall send the same notice ten days in advance of this hearing to the DNR if the proposed is in shoreland. At the applicant's option, the applicant may request a sketch plan review with no action by the Planning Commission and with no fee by giving 14 days' notice thereof to the Zoning Administrator, meeting time permitted.
4. The applicant shall complete the variance application approved by the City Council. The application shall contain submittal requirements, criteria for approval, procedure for consideration, and city contact information. The city shall not accept applications where the applicant has past due fees or charges due to the city until the account is made current.
5. Variances shall be decided within the required time frame with consideration for the following:
 - a. The applicant establishes that there are practical difficulties, as defined in this chapter, in complying with the official control;
 - b. The deviation from this chapter with any attached conditions will still be in harmony with the general purposes and intent of this chapter and the Comprehensive Plan; and
 - c. The variance will not create a land use not permitted in the zone.
6. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

7. When costs to the city involved in processing and reviewing an application exceeds the original application fees, the applicant shall reimburse the city for any additional costs. Such expenses may include, but are not limited to, payroll, mailing costs, consultant fees, and other professional services the city may need to retain in reviewing permits.
8. Failure by the owner to act within twelve months on a variance unless extended by the Board of Adjustment shall void the variance. A second extension shall require a new public hearing. This provision shall apply to any variance outstanding at the time of this chapter's adoption.
9. Appeals from the action of the City Council shall be filed with the District Court within 30 days after Council action.
10. The variance shall be filed with the County Recorder within 45 days.

CONSIDERATIONS: Practical difficulties is the legal standard the City must apply when considering variances. It is a three-factor test and all three factors of the test must be satisfied. The three factors are as follows:

1. **Reasonableness.** The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. **It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.** For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.
2. **Uniqueness.** The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.
3. **Essential character.** The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.