

## 1103.05 VARIANCES.

### 1103.05 SUBD. 1. AUTHORITY AND CONDITIONS.

The City Council may allow a departure from the terms of the zoning regulations pertaining to height, depth, or width of structures, the size of setbacks, site coverage, lot dimensions, zoning district size, the number of parking spaces and the size or location of signs where such departure would not be contrary to the public interest. A variance may be granted only in cases where hardship is shown for the size, shape or topography of the property, (not including conditions created by the applicant) and where the literal enforcement of this Ordinance would deprive the owner of all reasonable use of the land and/or building involved.

### 1103.05 SUBD. 2. REVIEW CRITERIA.

1. In considering all requests for a variance and in taking subsequent action, the City staff, the Planning Commission and the Council shall make a finding of fact that the proposed action will not:
  - A. Impair an adequate supply of light and air to adjacent property.
  - B. Unreasonably increase the congestion in the public street.
  - C. Increase the danger of fire or endanger to public safety.
  - D. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this Ordinance.
  - E. Violate the intent and purpose of the Comprehensive Plan.
  - F. Violate any of the terms or conditions of item (2) below.
2. A variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that:
  - A. Undue hardship will result if the variance is denied due to the existence of special conditions and circumstances which are peculiar to the land, structure or building involved.
    1. Special conditions may include exceptional topographic or water conditions, narrowness, shallowness or shape of the property.
    2. Undue hardship caused by the special conditions and circumstances may not be solely economic in nature, if a reasonable use of the property exists under the terms of this Ordinance.
    3. Special conditions and circumstances causing undue hardship shall not be a result of lot area size when the lot qualifies as a buildable parcel.
  - B. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance, or deny the applicant the ability to put the property in question to a reasonable use.
  - C. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant.
  - D. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.
  - E. The request is not a use variance.

- F. Variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant.
3. Application for a variance shall set forth reasons that the variance is justified in order to make reasonable use of the land, structure or building.

1103.05 SUBD. 3. PROCEDURES.

1. An application for a variance shall be submitted to the Zoning Administrator. A nonrefundable application fee, established from time to time by the City Council to cover administrative costs and costs of the hearing, shall accompany each application. The application shall contain the following information, as well as such additional information as may be required by the Zoning Administrator:
- A. The applicant's name and address.
  - B. A site plan drawn to scale showing the property dimensions, existing and proposed buildings and other structures, existing and proposed grading, landscaping, easements and location of utilities, as applicable. The Zoning Administrator may require the applicant to obtain a certified survey at the time of application.
  - C. The particular requirements of this Ordinance which prevent the proposed use or construction.
  - D. The characteristics of the subject property which prevent compliance with the said requirements of this Ordinance.
  - E. The minimum reduction of the requirements of this Ordinance which would be necessary to permit the proposed use or construction.
  - F. The particular hardship which would result if said particular requirements of this Ordinance were applied to the subject property.
  - G. If the variance is part of an application for Commercial, Industrial, or Multiple-Family Residential Site Plan Approval, all of the submittal requirements for a Site Plan, Section 1103.07, shall also apply.
2. A public hearing shall be set, advertised, and conducted by both the Planning Commission and City Council in accordance with Section 1103.09 of this Ordinance.
- A. For a variance in the Flood Plain District, the Zoning Administrator shall submit to the Commissioner of Natural Resources a copy of the application for proposed variances located in the Flood Plain District sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.
  - B. For a variance adjacent to Trunk Highway 169, State Highway, or Scott County right-of-way, the Zoning Administrator shall submit to the appropriate office a copy of the application for proposed variances located in the highway right-of-way sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.
3. The applicant or representative shall appear before the Planning Commission and City Council to answer questions concerning the proposed variance.

4. Within the time frame established by Minnesota Statutes section 15.99, following receipt of the completed application, the City Council shall render its decision granting or denying the variance. Such decision shall be accompanied by findings of fact and shall refer to any exhibits containing plans and specifications for the proposed variance. Such plans and specifications shall remain a part of the permanent records of the City Council. The findings of fact shall specify the reason or reasons for granting or denying the variance. The terms of relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. In extenuating circumstances, extension of the sixty (60) days may be granted upon receipt of signed request from applicant.
5. The City Council should not grant a variance until they have received a report and recommendation from the Planning Commission.
6. All decisions by the Council involving a variance request shall be final except that an aggrieved person or persons shall have the right to file an appeal within thirty (30) days of the decision to the Scott County District Court.
7. Whenever an application for a variance has been considered and denied by the City Council, a similar application and proposal for the variance affecting the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial, unless a decision to reconsider such matter is made by not less than two-thirds (2/3) vote of the full City Council.
8. Motions on variances require a simple majority of the Planning Commission or City Council for passage.
9. A copy of all decisions granting a variance shall be forwarded to the appropriate office as listed in Section 1103.05 Subd. 3, Procedures, (2) (A) and (B), within ten (10) days of such action.

#### 1103.05 SUBD. 4. LAPSE OF VARIANCE.

If within one (1) year after granting a variance the use, as allowed by the variance, shall not have been initiated or utilized, then such a variance shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the Council. Such extension shall be requested in writing and filed with the Zoning Administrator at least thirty (30) days before the expiration of the original variance. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to complete the use permitted in the variance. Such petition shall be presented to the Council for decision.