
1103.05 VARIANCES.

1103.05 SUBD. 1. AUTHORITY AND CONDITIONS.

The City Council may allow a variance from the terms of the zoning regulations, including restrictions placed on nonconformities, 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan, and; 3) the applicant establishes that there are practical difficulties in complying with the zoning code.

1103.05 SUBD. 2. REVIEW CRITERIA.

1. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:
 - A. The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;
 - B. The plight of the property owner is due to circumstances unique to the property not created by the landowner;
 - C. The variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

2. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property.
3. The Board of Adjustments and Appeals may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance.

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 zoning code which prevent the proposed use or construction.
 - D. The characteristics of the subject property which prevent compliance with the said requirements of this zoning code.
 - E. The minimum reduction of the requirements of this zoning code which would be necessary to permit the proposed use or construction.

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- F. The practical difficulties which would result if said requirements of this zoning code 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.

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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.

(Ord. 11-09, Section 1103.05, Subd. 1, 2, 3, Adopted September 19, 2011.)