

304. VARIANCES

- 304.005 **Board of Appeals.** The City Council is hereby established as the Board of Appeals (Board) and shall have the power to hear and decide variances under this section and appeals under section 310 in which it is alleged that there is an error in any administrative order, requirement, decision, or determination made in the interpretation or enforcement of the Zoning Code.
- 304.010 **Variances, Definition.** A variance is a modification or variation of a provision of the zoning code as applied to a specific piece of property or use.
- 304.015 **Procedure for Obtaining a Variance.** The owner or owners of land seeking a variance must file an application for a variance with the Clerk in accordance with the requirements of 304.020. Once the Clerk deems the application complete, the application will be heard by the Planning Commission in accordance with the requirements of section 304.025, which will issue an advisory report to the City Council on whether the variance should be granted. The City Council, acting as the Board of Adjustments and Appeals, will then issue a final determination on whether the variance is to be granted or denied in accordance with section 304.030.
- 304.020 **Variance Application Requirements.** Before consideration of a variance, an application for variance shall be made on forms provided by the City Clerk. The application shall be accompanied by the required information described below and by all required fees. Each application must include at a minimum:
- a) The legal description and address of parcel.
 - b) Name, address, and phone number of applicant (and of the owner if owner is not the applicant).
 - c) Plot plan drawn to scale. Elevation contour lines are required.
 - d) Plan showing existing and proposed new and changed structures on the lot.
 - e) Existing structures on adjacent lots.
 - f) A certificate by a registered professional land surveyor verifying the location of all buildings, setbacks, and building coverage.
 - g) A certificate by a registered professional land surveyor certifying other facts that in the opinion of the City are necessary for evaluation of the application.
 - h) A separate enumeration of each section of the code to which a variance is requested along with a demonstration that the criteria set forth in section 304.040 are met for each enumerated section.
 - i) Evidence demonstrating compliance with regulations of other governmental units when required by provisions of this code, State Law, or regulations of other governmental units. Non-limiting examples of government units which may have applicable regulations include the State of Minnesota, Rice Creek Watershed District, Minnesota Department of Natural Resources, White Bear Lake Conservation District, and the Minnesota Pollution Control Agency.

- j) Other documentation as applicable and as required by the City Code for the type of variance sought (see for example the impervious surface requirements of 302.050)

304.025 **Variance Hearing and Recommendation by the Planning Commission.** The Planning Commission is hereby established to hear and advise the Council on requests for variances. After the City Clerk determines that a variance application is complete and all fees have been paid, and any technical analysis by the City Planner and/or Engineer has been completed and a report issued, the Planning Commission shall conduct a public hearing in which the Planning Commission shall hear the oral and written views of interested persons. The Planning Commission shall make a recommendation, by majority vote, to the City Council on whether, in the opinion of the Planning Commission, the variances presented on the application should be granted or denied. The Planning Commission may recommend the grant of a variance subject to any conditions deemed reasonable by the Planning Commission.

304.030 **Final Decision.** Once the Planning Commission has had a reasonable opportunity to review and report to the City Council, the City Council shall decide on the application for variance by majority vote. Notice of the decision shall be mailed to the applicant. The City Council may impose conditions on the granting of the variance. When variances are denied, the City shall include explanation as to why the variance was denied. When a variance is granted, an explanation of any conditions imposed on the granting of the variance shall also be included. The Council shall maintain a record of its proceedings relative to the application for variances which shall include the minutes of its meetings and final order concerning the variance application. Where applicable, notice of the final order shall be sent to other government agencies as required by law.

304.035 **Revocation and Termination of Variances.** A violation of any condition set forth or required in granting a variance shall be a violation of the Code and automatically terminates the variance. Unless the City Council prescribes another expiration, a variance shall become void two years after it was granted, unless the use for which it is was granted has been established. The City Council may, for good cause, extend the expiration of a variance not more than once by one year, but only if an application for an extension is made in writing to the City Administrator before expiration.

304.040 **Standards for Variances.** Variances may be granted when the applicant for the variance establishes:

1. That there are practical difficulties in complying with the zoning ordinance;
2. That the proposed structure or use is in harmony with the general purposes and intent of the ordinance; and
3. That the proposed structure or use is consistent with the City's comprehensive plan.

“Practical difficulties”, as used in connection with the granting of a variance, means that i.) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, ii.) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and iii.) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

304.045 **Notice of Hearings.** Notice of Variance Hearings, both at the Planning Commission and the City Council shall be given according to this section.

1. Notice of variance hearings shall be mailed not less than ten (10) days before the date of the hearing to the person who filed the application for variance, and to each owner of property situated wholly or partially within 200 feet of the property lines to which the variance relates.
2. No new notice need be given for any hearing which is continued to a specified future date.

304.050 **Time for Action.** A final decision shall be rendered within sixty (60) days from the date of the application unless the applicant has been notified within fourteen (14) days that the application for variance is incomplete. The City Administrator is authorized to request additional time under Minnesota Stat. §15.99(f) as necessary.

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