

Chapter 18.45 VARIANCES

18.45.010 Purpose.

A variance to any development standard contained in this title, other than density and lot area, may be granted when practical difficulties, unnecessary hardship, or results inconsistent with the general purposes of CMC Title 16, Environment, and CMC Title 18, Zoning, would result from the literal enforcements of its requirements. The sole purpose of any variance shall be to prevent such difficulties, hardship, or results and no variance shall be granted that would have the effect of granting a special privilege not shared by another property in the same vicinity and zone, except when necessary to avoid such difficulties, hardship, or results.

(Ord. 2515 § 1 (Exh. A (part)), 2008; Ord. 2443 § 3 (Exh. A (part)), 2006)

(Ord. No. 2612, § I(Exh. A), 2-7-2011; Ord. No. 2649, § I, 5-21-2012)

18.45.020 Approval process.

- A. Minor Variance. A minor variance is one that results in the modification of up to ten percent of a numerical development standard (other than lot area or density) or up to one foot of setback that shall be subject to Type I procedure, pursuant to CMC Chapter 18.55 Administration and Procedures, and subject to the approval criteria contained in CMC Section 18.45.030(A).
- B. Major Variance. A major variance is one that results in the modification of a numerical development standard by more than ten percent but less than forty percent. ~~The board of adjustment is generally the decision maker regarding major variances. Where a variance is consolidated with an application for a Type III decision, the decision maker shall be the same as that for the Type III application. A major variance is subject to a Type III procedure with a final decision issued by the hearing examiner.~~ A major variance shall not be approved unless findings are made by the approval authority that all of the approval criteria under CMC Section 18.45.030 are satisfied.

(Ord. 2515 § 1 (Exh. A (part)), 2008; Ord. 2443 § 3 (Exh. A (part)), 2006)

(Ord. No. 2612, § I(Exh. A), 2-7-2011)

18.45.030 Minor variance.

The community development director may grant a minor variance upon demonstration by the applicant of compliance with all of the following approval criteria:

- A. Unusual circumstances or conditions apply to the property and/or the intended use that do not apply generally to other property in the same vicinity or district;
- B. The variance requested is the minimum necessary to relieve the unusual circumstances or conditions identified in subsection (A) of this section;
- C. The granting of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located;

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- D. The proposed variance does not exceed ten percent of the requested dimensional standard in which the variance is requested or one foot of setback, whichever is greater.
 - E. The unusual circumstances and conditions associated with the variance are not a result of the actions of the applicant or property owner.

(Ord. 2515 § 1 (Exh. A (part)), 2008: Ord. 2443 § 3 (Exh. A (part)), 2006)

(Ord. No. 2691, § I(Exh. A), 1-21-2014)

18.45.040 Major variance.

- A. The hearing examiner ~~board of adjustment (or hearing examiner, or planning commission, in accordance with Section 18.45.020(B))~~ shall consider all requests for major variances from the zoning code.
- B. Approval of a major variance must demonstrate with findings of compliance with all of the following criteria:
 - 1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is located;
 - 2. That such variance is necessary, because of special circumstances or conditions relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use, rights, and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
 - 3. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and in the zone in which the subject property is located.

(Ord. No. 2691, § I(Exh. A), 1-21-2014)

18.45.050 Conditions for granting—Extension.

In authorizing the variance, the hearing examiner ~~approval authority~~ may attach thereto such conditions that it deems to be necessary or desirable in order to carry out the intent and purpose of this chapter and the public interest. A variance so authorized shall become void after the expiration of one year, or a longer period as specified at the time of the approval authority action, if no building permit has been issued in accordance with the plans for which such variance was authorized, except that the community development director ~~approval authority~~ may extend the period of variance authorization, without a public hearing, for a period not to exceed twelve months upon a finding that there has been no basic change in pertinent conditions surrounding the property since the time of the original approval.

(Ord. 2515 § 1 (Exh. A (part)), 2008: Ord. 2443 § 3 (Exh. A (part)), 2006)

(Ord. No. 2691, § I(Exh. A), 1-21-2014)

Ord. No. 2691, § I(Exh. A), adopted Jan. 21, 2014, repealed § 18.45.050, which pertained to application requirements, and renumbered § 18.45.040 as § 18.45.050. See also the Code Comparative Table and Disposition List.

18.45.060 Prohibited variance.

Under no circumstances shall the approval authority grant a variance to permit a use not outright or conditionally permitted in the zone involved, or any use expressly or by implication prohibited by the terms of this title.

(Ord. 2515 § 1 (Exh. A (part)), 2008: Ord. 2443 § 3 (Exh. A (part)), 2006)

(Ord. No. 2691, § I(Exh. A), 1-21-2014)