

Section 86-29 Variances

- (a) *Intent.* Variances may be issued only when the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the property under consideration. A variance adjustment permit may be issued to vary or modify the strict application of the regulations or provisions contained in this chapter, subject to the review process as described in this section.
- (b) *Application forms.* Variances may be applied for only on the forms prepared by the city zoning administrator. All applications shall be accompanied by a list of names and addresses of the owners of lands within 350 feet of the property described on the application as such information appears on the records of the county.
- (c) *Application fee.* The council may, by resolution, establish a fee for the filing of applications for variances. The fee shall be paid before the application shall be considered and shall not be refundable.
- (d) *Procedure.* Application for the issuance of a variance shall be made to the planning commission. The planning commission may hold such hearings on the proposal as it may consider necessary, but at least one public hearing shall be held pursuant to Minn. Stat. § 462.357, subd. 3. Following the hearing, the planning commission shall make a report upon the proposal to the council and shall recommend to the council whatever action it deems advisable.
- (e) *Considerations.* The applicant shall prove that the literal enforcement of the provisions of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and the granting of the variances will be in keeping with the spirit and intent of this chapter. The term "practical difficulties," as used in connection with the granting of a variance means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute practical difficulties if reasonable use for the property exists under the terms of this chapter. The council may not permit as a variance any use that is not permitted under this chapter for property in the zone where the land is located. The council may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling.
- (f) *City council proceedings.* Upon receipt of the report of the planning commission, the council may hold whatever hearings it deems advisable and shall make a decision on the request for the variance. When the council is making this decision, it is acting as a board of zoning adjustments and appeals. The council may impose conditions and require guarantees in the granting of variances to ensure compliance and to protect adjacent properties. If planning commission meetings are cancelled due to lack of quorum and recommendations are not presented to the council within 30 days of the day of submitting application to the planning commission, the council may proceed without receiving a planning commission report; in this case, at least one public hearing still shall be held pursuant to Minn. Stat. § 462.357, subd. 3.
- (g) *Conditions.* The conditions in the granting of variance imposed by the council are binding for the applicant and all its successors and assigns. Violation of any of the conditions shall result in the variance becoming null and void unless a new variance for condition modification is applied for and approved pursuant to this section. Whenever an application for a variance has been considered and approved by the council which imposed certain conditions, an application for a variance modification shall not be considered by the planning commission or council for at least one-year from the date of its approval or when circumstance sufficiently change to justify a review.

- (h) *Expiration.* Whenever within one year after granting a variance, the work as permitted by the variance shall not have been commenced, then the variance shall become null and void unless a ~~request~~petition for extension of time in which to complete the work has been granted ~~by the council.~~ The extension shall be requested in writing and filed with the zoning administrator at least 30 days before the expiration of the original variance. There shall be no charge for the filing of the request~~petition~~. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance. Upon receipt of the extension request, the Zoning Administrator may grant an extension of up to one year.~~The petition shall be presented to the planning commission for a recommendation and to the council for a decision.~~
- (i) *[Certified copy.]* A certified copy of all variance permits shall be filed with the county recorder.
- U) *Appeal.* Any person aggrieved by the granting or denial of the issuance of a variance or extension shall have the right to appeal such decision to the state district court located in the county. Such appeal shall be filed with the court within 30 days of the date of the decision of the council.

(Code 1976, § 11.22; Ord. No. 680 2nd series, § 1, 9-24-2013)

State law reference(s)-Variances, Minn. Stat. § 462.357, subd. 6(2); appeals to court, Minn. Stat. § 462.361.