

16.72.030. Nonadministrative variance.

- A. *Purpose.* The purpose for a nonadministrative variance is to provide property owners relief from certain provisions of this title where conditions justify such relief on a case-by-case basis and where the criteria set forth in this section are met.
- B. *Applicant.* Any owner may submit an application for a nonadministrative variance.
- C. *Procedures.* Nonadministrative variances are processed as a Type 3 decision pursuant to the review procedures set forth in Chapter 16.80 MMC.
- D. *Applicability.* Circumstances where relief from a dimensional standard is sought subject to the limitation set forth in subsection (E) of this section.
- E. *Limitations.*
1. Nonadministrative variances may be granted where the application of a dimensional standard would result in an unusual or unreasonable hardship due to the physical characteristics of the site, such as a substandard or irregularly shaped lot, topography that significantly constrains development, or the presence of critical areas and/or buffers on the property which significantly constrain development;
 2. Evidence of other variances granted under similar circumstances shall not be considered precedent and shall not be considered in the granting of a nonadministrative variance; and
 3. No variance shall be granted for any of the following:
 - a. To alter any definition or interpretation of this title;
 - b. To alter any provision establishing a permitted or conditional use within a zoning district; ~~or~~
 - c. To alter any administrative provisions including procedural provisions or fees;
 - d. To make legal structures or improvements that were installed in violation of MMC and which would not be permitted without a variance;
 - e. To alter the maximum residential density allowed in any zoning district; or
 - f. To alter the provisions of Chapter 14.04 MMC, SEPA.
- F. *Criteria for approval.* ~~The decision authority may approve nonadministrative variance only if the following criteria are satisfied~~ Unless another section of the MMC provides additional or separate criteria, a variance shall not be granted unless all the following criteria are met:
1. The variance does not constitute a granting of special privilege inconsistent with the limitation upon uses of other properties in the ~~vicinity and~~ zone in which the subject property is located; and
 2. The variance is necessary to make reasonable use of the property and such necessity is because of special circumstances relating to the size, shape, topography, ~~location or surroundings~~ or other factors on the lot such as the presence of critical areas or buffers that substantially constrain development of the subject property such that the property owner cannot develop the property consistent with allowed uses to provide it with use rights and privileges permitted other properties in the vicinity and in the zone in which the subject property is located; and

3. The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant; and
4. 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 zone in which the subject property is situated; and
5. Alternative development concepts in compliance with the existing code have been evaluated and undue hardship would result if such adherence to code provision is required; and
6. The variance is consistent with the purpose and intent of the relevant city ordinances and the comprehensive plan; and
7. The basis for the variance request is not the result of deliberate actions of the applicant or property owner; and
58. The variance granted is the minimum necessary to provide reasonable relief use of the property as defined by MMC 16.72.060.

G. Hardship defined. For purposes of this section, it shall not be deemed a hardship if the applicant can develop the property for its allowed use under the zone without the granting of a variance.

G.H. Conditions of approval. The decision authority may attach reasonable conditions, including reducing the scope or scale of any variance granted, to ensure that the variance is no more than the minimum necessary to provide reasonable use of the property safeguard the public health, general welfare and safety.

H.I. Lapse of approval.

1. An approved nonadministrative variance shall expire after one year from the later date of the decision being issued or an appeal becoming final unless a complete building permit application is submitted; and
2. Expiration of the nonadministrative variance is automatic and notice is not required; and
3. The director may grant a single six-month extension if the applicant makes such a request in writing prior to the expiration date and can show good cause for granting the extension.