



MEDINA, WASHINGTON

AGENDA ITEM 6.5

Wednesday September 11, 2023

Subject: Non-administrative Variance Code Amendment Proposal

Planning Commission Action: Discussion, and Council Recommendation

Public Hearing Required - Noticed

Staff Contact: Steven Wilcox, Development Services Director

A. Background - 2024 Council Workplan

The 2024 Council Workplan for Development Services Department includes a review of Medina's existing non-administrative variance procedures found within Medina Municipal Code 16.72.030.

The purpose of the review is to ensure that the City's land use codes and comprehensive plan are implemented and that variances are a rare exception, granted only when truly necessary. Non-administrative variances are heard by the City's hearing examiner.

With assistance of City Attorney Jennifer Robertson, a proposal was drafted into an Agenda Bill which she presented to Council on April 22, 2024 and which is now included for you as Exhibit 1.

Council discussed the proposal and directed that the Planning Commission review and make recommendation which is where we are now.

Subsequent to the April 22, 2024 Council presentation, our City Attorney prepared a draft ordinance which is included for you as Exhibit 2.

To assist with your review, the entire MMC Section 16.72.030 is provided as Exhibit 3 for comparison to the draft ordinance.

The draft ordinance (Exhibit 2) has the changes underlined, which may be difficult for some to read. I am providing the draft ordinance unmodified from Exhibit 2, but with the underlined changes highlighted. This highlighted version of the draft ordinance is provided to you as Exhibit 4.

B. Non-Administrative Variance Purpose and Procedure

Medina Municipal Code 16.72.010 states:

“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.”

City staff review variance applications and generate a staff report as part of the hearing examiner process. The hearing examiner conducts the hearing. The applicant may be represented by legal counsel at the hearing. The city attorney normally does not attend hearings unless asked to by staff. Each the City and variance applicant have the opportunity to present during the hearing. The hearing examiner will listen, ask questions, and will close the hearing with a formal decision issued usually within a short period of time.

The hearing examiner is required to follow the procedures outlined within our Municipal Code.

C. Issue Prompting this Proposal

In the past, non-administrative variances have often been easily granted in Medina, which is contrary to the intent that they be a rare exception, and only granted when necessary for the property owner to make reasonable use of their property.

As an example, there have been code enforcement violations where structures were built without benefit of required Medina permits. Proper permitting prior to construction would have identified that these structures were not allowed under our Municipal Code. Under permit application, options would have been given, but permits would not have been issued if there were code violations in the design.

Once Medina staff become involved there is an investigation. If there is a violation discovered, then action is taken as our MMC requires. Actions may include:

- Issuance of a Stop Work Order
- Issuance of a Notice of Violation or Fine through Citation
- Voluntary Compliance Agreement
- Final Order

Within the violation process there are options for the person with the violations including:

- Remove the structure
- Submit a permit application with design modifications showing code compliance
- Application for a variance to request that the non-code compliant structure remain as it is

D. Proposed Code Amendment Section by Section

The following was prepared by our City Attorney as part of the April 22, 2024 Council presentation.

The attached draft revisions to MMC 16.72.030 would tighten up the criteria under which this type of variance may be granted by the hearing examiner and would provide greater guidance to the hearing examiner and applicants regarding the situations that would justify the granting of a non-administrative variance. These proposed revisions are outlined below:

1. MMC 16.72.030.A is clarified to ensure that non-administrative variances are only granted when they meet the criteria in the code.
2. MMC 16.72.030E.1 is modified to add more detail as to what type of lot may be eligible for a variance. This provides better guidance for the hearing examiner and applicant.
3. MMC 16.72.030E.2 is modified to clarify that prior non-administrative variances do not create precedent and cannot be used as a justification for obtaining a future non-administrative variance.
4. MMC 16.72.030.E.3 is modified to expand the list of items under which a non-administrative variance may not be granted, including:
 - a. To alter any provision establishing a permitted or conditional use within a zoning district; (revision to subsection “b”)
 - b. To alter any administrative provisions including procedures or fees; (revision to subsection “c”)
 - c. To legalize structures or improvements that were installed in violation of MMC and which would not be permitted without a variance; (**New** subsection “d”) (Note, this would prohibit the owner who builds something without permits and in violation of the code being able to keep that improvement by gaining a variance.)
 - d. To alter the maximum residential density allowed in any zoning district; (**New** subsection “e”)
 - e. To alter the provisions of Chapter 14.04 MMC, SEPA. (**New** subsection “f”)
5. MMC 16.72.030.F is modified to clarify that a non-administrative variance may only be granted if it meets all of the criteria in that section. (Note, this is far more typical variance code language than what is currently in the Medina code.)
6. MMC 16.72.030.F.1 is modified to remove the “vicinity” language when evaluating whether the grant of the non-administrative variance constitutes a special privilege.

Instead, the consideration is limited to the zone. The purpose for this suggested edit is to avoid the compounding of variances granted when one is granted in an area of the city; the “vicinity” language makes it more likely that the neighboring property owner could meet this criterion just due to be near a property that obtained a variance. Limiting this to zone, treats properties in the same zone equitably, regardless of what their neighbors may or may not have been granted.

7. MMC 16.72.030.F.2 is modified to narrow what is deemed “necessary” for the purposes of granting the non-administrative variance by requiring that the variance is necessary to “make reasonable use of the property” and tying that necessity to the factors related to the lot, including factors that “substantially constrain development” such that “the property owner cannot develop the property consistent with allowed uses.”
8. MMC 16.72.030.F – **three new subsections** “5”, “6”, and “7” are recommended which provide additional criteria that must be met before a non-administrative variance can be granted. These are:
 - a. The applicant must have first evaluated alternative development concepts in compliance with the existing code and that undue hardship would result if such adherence to code provision is required;
 - b. The variance is consistent with the purpose and intent of the relevant city ordinances and the comprehensive plan;
 - c. The basis for the variance request is not the result of deliberate actions of the applicant or property owner;
9. MMC 16.72.030.F.8 (currently subsection “5”) is modified to limit the approval to reasonable use of the property as opposed to using the language “reasonable relief” as is in the current code.
10. MMC 16.72.030.G – **new subsection** – this new subsection defines “hardship”: “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.” By putting this definition in the code, the hearing examiner will need to use this definition in weighing the criteria for granting the non-administrative variance.
11. MMC 16.72.030.H (previously “G”) – “Conditions of Approval” is modified to specifically permit the hearing examiner to reduce 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”. This provides more flexibility to the hearing examiner such that the answer on whether to grant the variance is not limited to “yes” or “no”. Rather, the hearing examiner can tailor the variance to more closely meet the City’s standards while giving the applicant added flexibility to make reasonable use of the property.

E. Summary and Next Steps

- The Council supports the non-administrative code amendment proposal detailed in Exhibit 1. This proposal has been forwarded to the Planning Commission for review.
- Currently, the draft ordinance is under review by the Department of Commerce.
- Our planning consultant, LDC, is also evaluating the draft ordinance for SEPA compliance, with Jonathan Kesler providing final confirmation.
- A notice of the public hearing scheduled for September 11, 2024, regarding this proposed code amendment was published. The comment period has closed with no feedback received.
- The Planning Commission will need to consider any comments from the public notice or the public hearing.

Planning Commission is requested to approve the proposed amendments to the Medina Municipal Code (MMC) 16.72.030. Upon receiving the Planning Commission's approval, the proposal will be presented to the Council for final approval.

Attachments

Exhibit 1, Agenda Bill April 22, 2024

Exhibit 2, Draft Ordinance

Exhibit 3, MMC 16.72.030. Nonadministrative variance

Exhibit 4, Draft Ordinance with changes highlighted

Proposed Planning Commission Motion:

"I move to direct staff to forward the draft non-administrative variance ordinance, as detailed in Exhibit 2, to the City Council for their review and approval."