

## **Sec. 113-62. Variances.**

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Undue hardship* means the same as that term defined in Minn. Stats. § 462.357, as may be amended, meaning that the property in question cannot be put to a reasonable use if used under the conditions allowed by this chapter, the plight of the landowner is due to circumstances unique to the property not caused by the landowner, and a variance, if granted, shall not alter the character of the locality. Economic considerations alone shall not constitute an undue hardship if a reasonable use of the property exists under the terms of this chapter. Undue hardship may also include inadequate access to direct sunlight for solar energy systems.

*Variance* means a modification of or variation from the provisions of this chapter consistent with the state enabling statute for municipalities, as applied to a specific property and granted pursuant to the standards and procedures of this chapter, except that a variance shall not be used for modification of the allowable uses within a district and shall not allow uses that are prohibited.

- (b) *Purpose.* The purpose of this section is to provide for deviations from the literal provisions of this chapter in instances where strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.
- (c) *Application.*
- (1) Any owner of property or a person holding a contract to purchase property, or an optionee holding an option conditioned solely on the grant of a variance, or the duly authorized agent of such appellant, may make application for a variance. The application shall be made on forms prepared by the zoning administrator.
  - (2) The application shall contain the legal description of the property, the zoning district in which it is located, a brief statement of the reasons the variance is requested, a statement of the ownership interest therein of the applicant and the names and addresses of the owners of all abutting property as listed on the current real estate tax rolls. The application shall be verified.
- (d) *Variances prohibited.* No variance may be granted for a use of any property different from that permitted by this chapter.
- (e) *Review criteria.* The city council shall not approve any variance request unless they find that failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met:
- (1) That, because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
  - (2) That the conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable,

generally, to other property within the same zoning classification.

- (3) That the purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.
  - (4) That the alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.
  - (5) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.
  - (6) That the requested variance is the minimum action required to eliminate the hardship.
  - (7) That it does not involve a use which is not allowed within the respective zoning district.
- (f) *Conditions.* The city may attach such conditions to the grant of the variance as it shall determine will be necessary or desirable to bring it within the purpose and intent of the chapter.
- (g) *Procedures.*
- (1) All applications for variances shall be referred to the planning commission for study and recommendation to the city council.
  - (2) Within 60 days, the planning commission shall forward its recommendations to the city council; if no recommendation is transmitted within 60 days after referral of the application for variance to the planning commission, the city council may take action without further awaiting such recommendation.
  - (3) Variances are granted or denied by motion of the city council.
- (h) *Termination.* The violation of any condition of the variance shall terminate the variance. If the property is not used or improvements substantially begun within a period of one year after the decision granting the variance, unless the variance decision provides otherwise, the variance shall be terminated. Unless the city council specifically approves a different time when action is officially taken on the request, approvals which have been issued under the provisions of this section shall expire without further action by the planning commission or the city council, unless the applicant commences the authorized use or improvement within one year of the date the variance is issued; or, unless before the expiration of the one-year period, the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by city council. The request for extension shall state facts showing a good faith attempt to complete or utilize the approval permitted in the variance. A request for an extension not exceeding one year shall be subject to the review and approval of the zoning administrator. Should a second extension of time, or any extension of time longer than one year, be requested by the applicant, it shall be presented to the planning commission for a recommendation and to the city council for a decision.

(Code 1993, § 9-15.03)

**State law references:** Variances, Minn. Stats. § 462.357, subd. 6(2).

Secs. 113-63--113-82. Reserved.