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VARIANCE

**Application Information
Land Use Administration**

**City of Shakopee
129 Holmes Street South
Shakopee, MN 55379
(952) 233-9300**

Revised March 2017

Submittal Requirements for Variances

SEC. 151.015, SUBD. C

An application for a variance shall be filled with the Zoning Administrator on the appropriate forms stating the undue hardship claimed. The application must be accompanied by the following:

- A. A site plan at a scale large enough for clarity showing the following information:
 - 1. Location and dimension of lots, buildings, driveways, and off-set parking spaces;
 - 2. Distances between buildings and front, side and rear lot lines; principal buildings and accessory structures; principal buildings and accessory structures on adjacent lots;
 - 3. Location of signs, easements, underground utilities, septic tanks, tile fields, and water wells; and
 - 4. Any additional information as reasonably requested may be required by the Zoning Administrator.

- B. Evidence of ownership or an interest in the property;

- C. The application fee, recording fee; and

- D. Such other information as may be required by the City.

- E. City will provide mailing labels for residents within 500' of project property. Applicant (except single family applications) will be expected to mail out notices and conduct a neighborhood meeting at least 2 weeks prior to Public Hearing at City Council meeting.

151.015 VARIANCES.

(A) Variance jurisdiction. The Board of Adjustment and Appeals shall have jurisdiction over any variance which is not closely related to a land use application requiring consideration by the Planning Commission and City Council. Any variance which is closely related to such a land use application shall be under the jurisdiction of the Planning Commission and City Council.

(B) Criteria for granting variances. A variance from the requirements of the zoning ordinance may be granted where the following circumstances are found to exist:

(1) (a) When the application for the variance establishes that there are practical difficulties in complying with the official control.

(b) Practical difficulties means the following:

1. The property owner proposes to use the property in a reasonable manner not permitted by an official control;

2. The plight of the landowner is due to circumstances unique to the property;

3. The circumstances were not created by the landowner;

4. The variance, if granted, will not alter the essential character of the locality; and

5. The problems extend beyond economic considerations. Economic considerations alone do not constitute practical difficulties.

(2) It has been demonstrated that a variance as requested will be in harmony with the general purposes and intent of the chapter and when the variance as requested is consistent with the comprehensive plan;

(3) The request is not for a use variance;

(4) Conditions to be imposed by the Board of Adjustment and Appeals must be directly related to and must bear a rough proportionality to the impact created by the variance; and

(5) Variances in the Floodplain Overlay Zone also shall meet the following criteria:

(a) No variance shall have the effect of allowing a lower degree of flood protection than the regulatory flood protection elevation for the particular area;

(b) The Board shall submit to the Commissioner of the State Department of Natural Resources a copy of the application for proposed variance sufficiently in advance so that the Commissioner will receive at least 10 days' notice of the hearing;

(c) A copy of all decisions granting variances shall be forwarded to the Commissioner of the Department of Natural Resources within 10 days of such action; and

(d) The Zoning Administrator shall notify the applicant for a variance that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and that such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. The city shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

(C) Application. An application for a variance shall be filed with the Zoning Administrator on the appropriate forms stating the undue hardship claimed. The application must be accompanied by the following:

(1) A site plan at a scale large enough for clarity showing the following information:

(a) Location and dimensions of lots, buildings, driveways, and off-street parking spaces;

(b) Distances between buildings and front, side, and rear lot lines; principal buildings and accessory structures; principal buildings and accessory structures on adjacent lots;

(c) Location of signs, easements, underground utilities, septic tanks, tile fields, and water wells; and

(d) Any additional information as reasonably may be required by the Zoning Administrator.

(2) A list of the names and addresses of the owners of all properties located wholly or partially within 350 feet of the property, as such appear on the records of the County Recorder;

(3) Evidence of ownership or an interest in the property;

(4) The fee; and

(5) Such other information as may be required by the city.

(D) Public hearing.

(1) Generally. Upon receipt of a completed application, a date shall be set for a public hearing before the Board of Adjustment and Appeals. Property owners within 350 feet of the property for which a variance is requested shall be notified by mail of the proposed variance at least 10 days prior to the public hearing. Published notice of hearing also shall be given at least 10 days before the hearing in the official newspaper.

(2) Shoreland Overlay Zone. The Commissioner of the Department of Natural Resources shall be given written notice all hearings to consider a variance in the Shoreland Overlay Zone at least 10 days before the day of the hearing.

(E) Decision.

(1) Generally. Following the public hearing, the Board of Adjustment and Appeals shall decide the matter before it. Variances may be approved by the affirmative vote of a simple majority of those present. If the Board denies a variance, it shall make a finding and determination that the conditions required for approval do not exist. No application for a variance which has been denied wholly or in part shall be resubmitted for a period of 6 months from the date of denial, except on grounds of new evidence or proof of change of conditions. All decisions by the Board of Adjustment and Appeals are final subject to appeal to the City Council.

(2) Shoreland Overlay Zone. A copy of any approved variance affecting land within the Shoreland Overlay Zone shall be sent to the Commissioner of the State Department of Natural Resources within 10 days after approval. When a variance has been approved despite the Commissioner's recommendation of denial, the copy of the final action shall be accompanied by a summary of the public record and testimony

regarding the matter and the findings of fact and conclusions which support the issuance of the variance.

(F) Appeal. Any person aggrieved by a decision of the Board of Adjustment and Appeals regarding a variance may have such decision reviewed by the City Council if a request for review is submitted to the Zoning Administrator within 10 days of the date of the decision. The appeal shall be in writing and shall include a statement of the alleged errors or omissions of the Board.

(G) Additional conditions. In granting a variance, the Board of Adjustment and Appeals or City Council may impose conditions in order to preserve the health, safety, or welfare of the community or in order to implement the purposes of this chapter or the comprehensive plan.

(H) Recording. A copy of the variance shall be maintained in the city's records and shall also be required to be recorded at the County Recorder's office or the County Registrar of Titles office.

(I) Term of variance. Any variance granted by the city shall run with the land unless within one year of the date of approval no building permit has been issued or substantial work performed on the project, in which case the variance shall be null and void. The Board may extend the period for construction upon finding that the interest of the owners of neighboring properties will not be adversely affected by such extension.

(J) Specific project. A variance shall be valid only for the project for which it was granted. Construction of any project shall be in substantial compliance with the building plans and specifications reviewed and approved by the Board of Adjustment and Appeals or the City Council.

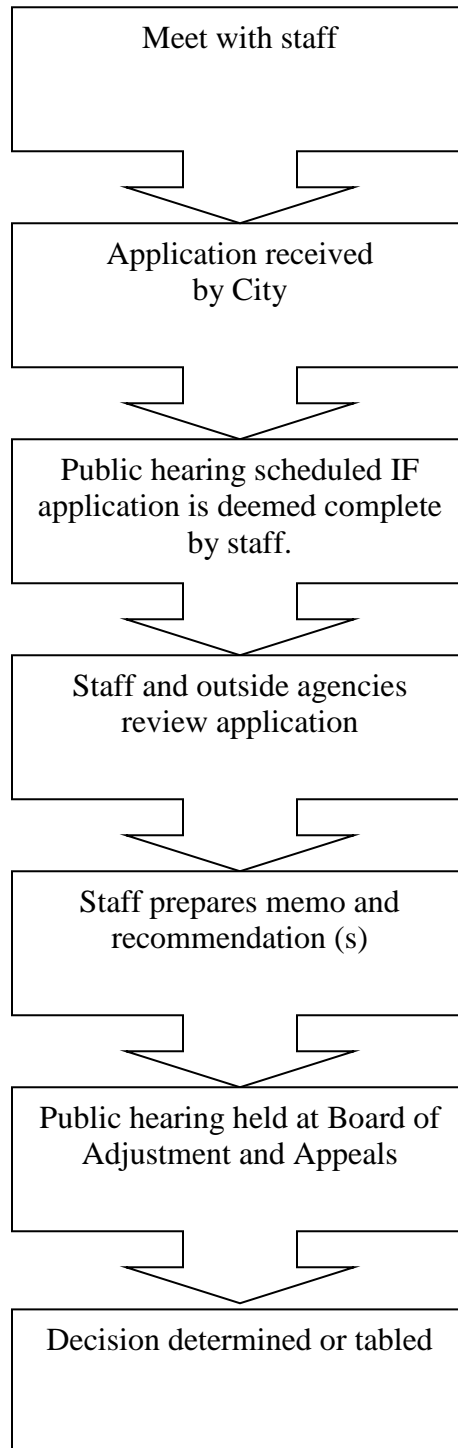
(K) Construction during appeal period. Any applicant who obtains a building permit and starts construction upon the decision of the Board of Adjustment and Appeals prior to the termination of the appeal period, assumes the risk that the decision may be reversed upon appeal. When an appeal is received by the city, the applicant will be notified of the appeal and informed of the date of the City Council meeting at which it will be heard.

(L) Violations. No person shall violate, fail to comply with, or assist, direct, or permit the violation of the terms or conditions of a variance. Such violation shall be a violation of the variance and shall render the variance null and void.

(2013 Code, § 11.89) (Ord. 31, passed 10-25-1979; Ord. 35, passed 1-31-1980; Ord. 246, passed 6-17-1988; Ord. 377, passed 7-7-1994; Ord. 694, passed 2-5-2004; Ord. 847, passed 6-30-2011) Penalty, see § 151.999



Variance Review Process



Note: City staff must determine the completeness of applications within 10 days of submittal. Incomplete applications will NOT be processed.