

# CITY OF ROCKVILLE

## VARIANCE APPLICATION AND THE PROCESS

### VARIANCES

No variance in the provisions or requirements of this Ordinance shall be authorized by the City Council unless it finds evidence that the following facts and conditions exist:

1. **Unique Circumstances.** That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district. The unique circumstances did not result from the acts of the property owner.
2. **Necessary to Preserve reasonable use of the property.** The property cannot be put to a reasonable use without the variance. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same district and in the same vicinity.
3. **Not merely economic.** The possibility of increased financial return or economic consideration will not in itself be deemed sufficient to warrant a variance if a reasonable use for the property exists under this Ordinance's terms. This means that cost or money savings cannot be the only reason for the variance.
4. **Maintains the Character of the Neighborhood.** The variance will not alter the area's essential character of the neighborhood.
5. **Meets the Spirit of this Ordinance and Comprehensive Plan.** The variance maintains the spirit and intent of this Ordinance and the Comprehensive Plan.

### OTHER CONSIDERATIONS

1. **Solar Energy Systems.** Practical difficulties shall include, but not be limited to, inadequate access to direct sunlight for solar energy systems.
2. **Earth Sheltered Homes.** Variances shall be granted for earth sheltered construction as defined in Minn. Stat. ' 116J.06, Subd. 2, when in harmony with this Ordinance.
3. **Non-permitted Use.** The City Council may not permit as a variance any use that is not permitted under this Ordinance for property in the zone where the affected person's land is located.
4. **Temporary Use for one family dwelling.** The City Council may permit as a variance the temporary use of a one (1) family dwelling as a two (2) family dwelling.
5. **Variances in Floodplain Districts.** No variance shall have the effect of allowing a Floodplain District a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by state law.
6. **Conditions.** The City Council may impose conditions in granting variances to ensure compliance and protect adjacent properties.

### VARIANCE PROCEDURE

1. **Application Filing Required.** A person applying for a variance must fill out and submit to the Zoning Administrator a Variance Application form.
  - a) Application filled out & signed
  - b) Variance justification form filled out: A variance cannot be granted unless evidence is presented that satisfies, at a minimum, the 3 questions on the justification form. Failure to adequately provide such information may result in a denial of your request for a variance.
2. **Copy of Deed.**
3. **Provide Individual Property Owner names:** Within 350 feet or nearest 10 property owners (whichever is greatest).
4. **Required Fees.** A fee the City Council shall establish by resolution must accompany the application. **An additional fee may be charged for a typical project, which in the opinion of the Zoning Administrator will require additional staff time and/or City expenditures. In such case, the applicant must reimburse the City for administrative time and professional services and costs incurred by the City.** The required fee offsets – staff time, publishing the public hearing notice, mailing notices to property owners, the regular scheduled meetings of the Planning Commission and Council. (\*Note: there is an additional cost to hold a special meeting.)
5. **Detailed material.** Fully explaining the specific variance request.
6. **Application must include a site plan**

Site Plan shows the following, as applicable:

- a) Site description (legal description).
  - b) A Certificate of Survey.
  - c) Site plan drawn to scale showing the parcel and building dimensions, area and setbacks.
  - d) Location of all existing and proposed buildings and their square footage.
  - e) Curb cuts, driveways, access roads, parking spaces, off-street loading areas, sidewalks, vehicular circulation, and snow storage locations.
  - f) Landscaping and screening plans.
  - g) Waste facilities including enclosure and screening.
  - h) Drainage and grading plan.
  - i) Sanitary sewer and water plan with estimated use per day.
  - j) Soil type.
  - k) Any additional written or graphic information reasonably required by the Zoning Administrator or the Planning Commission.
7. **Notice for Floodplain Properties.**
- a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance; and
  - b) 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.

**When a complete variance application is on file - the next steps:**

1. **Referral to Planning Commission.** After the Zoning Administrator has reviewed the application and the date has been set for the public hearing, the Zoning Administrator shall refer the application to the Planning Commission, together with the Zoning Administrator's review and recommendations regarding the application.
2. **Planning Commission Review.** The Planning Commission shall consider the request at their next regularly scheduled meeting and shall make a recommendation and report to the City Council
  - a) The applicant or the applicant's representative(s) must appear before the Planning Commission in order to answer questions concerning the Variance application.
3. **Recommendation by the Planning Commission.** After reviewing the Variance, the Planning Commission will make a written report and recommendation to the City Council.
4. **Decision by City Council.** Upon receiving the Planning Commission's report and recommendation to the City Council as to whether or not a variance should be granted. The City Council, acting as the Board of Adjustment will make the final decisions on all variances.
  - a) **Appearance by Applicant.** The applicant or applicant's representative(s) must appear before the City Council in order to answer questions concerning the variance application.
5. **Vote Required.** Approval of any Variance to this Ordinance will require passage by a majority of the votes cast.
6. **Conditions and/or Revisions.** If the City Council grants the Variance, it may impose conditions it considers necessary to protect public health, safety and welfare. The City Council may also revise the variance to ensure that it is the minimum variance required.
7. **Written Findings.** The City Council will issue written findings stating the reasons for its decision and any conditions imposed, and will serve a copy if its decision on the applicant by U.S. mail, within ten (10) days after its decision. In any event, the City Council will make a decision on each Variance application within sixty (60) days after the Zoning Administrator receives the application or will extend the time for consideration under state law.
8. **Recording.** A certified copy of every Variance to abstract or registered property shall be filed with the Stearns County Recorder. The variance shall include the legal description of the property involved. Stearns County Recorder office charges a fee to record the legal document. **The Applicant is responsible for those fees.**
9. **Resubmission.** No application, which is substantially the same as and application of a denied Variance shall be resubmitted for a period of one (1) year from the date of the denial. The City Council may permit a new application if, in its opinion, new evidence or a change in circumstances warrant reconsideration.

## **APPEALS AND ADMINISTRATIVE DECISIONS**

Appeals of decisions of the Zoning Administrator will be heard by the City Council provided that the person making the appeal files an application for a hearing within thirty (30) days after the decision to be appealed was delivered to the applicant by the Zoning Administrator. The following procedure will be followed:

1. **Application**. The person making the appeal must apply for a hearing before the City Council on forms provided by the Zoning Administrator.
2. **Notice and Hearing**. The City Council will schedule a hearing on the appeal.
  - a) At least ten (10) days prior to the hearing a notice will be published in the official county newspaper.
  - b) The City Council will make their decision within thirty (30) days of the public hearing or may extend the time for consideration as permitted by state law.

## **LAPSE OF VARIANCE**

If within one (1) year after granting a Variance the work permitted is not started, such variance shall become null and void unless a petition for an extension has been approved by the City Council.

## **THE STEPS:**

1. **Provide a complete application** by the 1<sup>st</sup> Wednesday of the month to be on the *following* month's Planning Commission Agenda.
2. **Planning Commission** – (meets the 1st Wednesday of the month) Planning Commission may schedule a site visit; hold the public hearing at their meeting and make a recommendation to the Council at the next City Council meeting.
3. **Council** - (meets 2nd Wednesday of the month) Council makes the final decision – if Council grants the Variance Request.
4. **Applicant** –
  - **If applicant waits for Council approval before providing the plans** the next step is to fill out the Building Permit Application and provide two (2) full sets of plans to City Hall.
  - **If Applicant provided the Building Permit Application and two (2) full sets of plans with the variance request.** The applicant will need to notify City Hall that the plans that are on file are correct. This process will not be forwarded to the Building Official until applicant contacts City Hall.
5. **Building Official** - Reviews the plans (allow 5-7 days). Once City Hall receives the plans back, Staff will notify the Applicant with the cost of the building permit.

*I hereby certify that I have read the above information and I agree with the terms.*

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**Applicant Signature**

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**Date**

## VARIANCE INFORMATION SHEET

**Variance Definition:** A modification of the literal provisions of this ordinance granted when strict enforcement would cause practical difficulties owing to circumstances unique to the individual property on which the variance is granted. The crucial points of the variance are (a) practical difficulties, (b) unique circumstances and (c) applying to individual property. A variance is not justified unless all three elements are present in the case. District boundary lines, zoning, property use, or non-conforming use restrictions shall not be revised or amended by granting a request for variances.

**Variance:** Where there are practical difficulties or unusual hardships in the way of carrying out the strict letter of the provisions of this ordinance, the Governing Body shall have the power, in a specific case to permit a variance from the provisions of this ordinance (see definition of variance). A variance permit shall expire after ninety (90) days following date of issuance unless written application for time extension is received and granted by the Governing Body prior to such expiration date.

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**WHEN IS A VARIANCE APPROPRIATE?** A variance may be needed when a landowner wishes to develop property, and due to the uniqueness of their lot, they are unable to comply with the ordinance.

**CAN ANYONE GET A VARIANCE?** No. The courts have said the applicant has a “heavy burden of proof” to show there are no reasonable development options, and there is “hardship” in following the rules of the ordinance.

**WHAT IS A HARDSHIP?** “Hardship” as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; 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. (Minnesota Statutes 394.27)

**HOW DO I APPLY FOR A VARIANCE?** **You must submit a completed application and a site plan (to scale) that shows all physical characteristics of your property to the Planning/Zoning Committee.** There is an example of a site plan attached to the variance application. This site plan must include: accurate property dimensions and shape, road centerline and right-of-way, all existing and proposed structures with dimensions, septic system, wells, driveways, city services, nearby structures on adjacent property, steep slopes, topographic alterations, wetlands, etc. All site plans must be signed and dated by the applicant.

**WHO DECIDES IF I WILL GET A VARIANCE?** After submitting the application for a variance to the Planning/Zoning Committee for review their recommendation is forwarded to the City Council. Applications are to be submitted to the City Clerk and they will be put on the agenda for the next available meeting. The applicant then decides if they want to proceed with the variance request. If the applicant does proceed, the applicant then requests a Public Hearing to formally ask for the variance to be granted. A **fee of \$200.00** must accompany this request. At the public hearing the Planning Commission and the community have the opportunity to voice their opinions, both for and against, regarding the variance request. If it is found that the three points outlined above in the definition of a variance are met, it will then go to City Council for approval. Any building permits required in relation to a variance must also be approved by the City Council.

**It is important to note that a variance cannot be used to circumvent the more formal procedures required to change the zoning category of land (request for rezoning).**

**CITY OF ROCKVILLE**  
**VARIANCE REQUEST APPLICATION**  
**Application Fee \$200.00 + Recording Fee \$46.00 (per document)**  
**Separate checks are required: 1 for Variance Request & 1 for Recording Fee(s)**  
**Need a Copy of Deed**

**PLEASE NOTE: any costs** (i.e., legal, engineering, administrative, Stearns County fees, etc.) incurred over the application fee will be the responsibility of the petitioner.

Property Location/Address \_\_\_\_\_

Legal Description \_\_\_\_\_

Parcel# \_\_\_\_\_ Currently Zoned \_\_\_\_\_

Explanation of Request \_\_\_\_\_

If replacing an existing structure, what will be done with the old structure? \_\_\_\_\_

Has a variance request been made previously on this property? \_\_\_\_\_ If yes, when? \_\_\_\_\_

**PROPERTY OWNER:**

Name (Print) \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*\*Signature of property owner shall serve as acknowledgement and authorization of this request.*

**APPLICANT:**

Name (Print) \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*I hereby certify that I have read the above information and I agree with the terms.*

**STAFF USE ONLY:**

Permit# \_\_\_\_\_

R# \_\_\_\_\_ Variance Application Fee Check # \_\_\_\_\_ Date \_\_\_\_\_ 101.41000.34103 \$200.00

R# \_\_\_\_\_ Reimb. for Invoice - Check# \_\_\_\_\_ Date \_\_\_\_\_ 101.41000-34102 \$46.00

## VARIANCE JUSTIFICATION FORM

Please use this form to explain how your variance request meets the three requirements for a variance.

- Practical difficulties:

- Unique circumstances:

- Applies to the individual property:

A variance cannot be granted unless evidence is presented that satisfies, at a minimum, the three conditions above. Failure to adequately provide such information may result in a denial of your request for a variance (attach additional sheets if necessary).

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The undersigned hereby certifies that they are the owner of the property located at:

\_\_\_\_\_

And hereby agrees to locate the proposed \_\_\_\_\_ as shown by the diagram above if a variance is granted, and further certifies that the block plan shown by the diagram above is a current and correct plan of structures that exist on said property.

*I hereby certify that I have read the above information and I agree with the terms.*

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date