

## 3.10 Checklist

### Variance

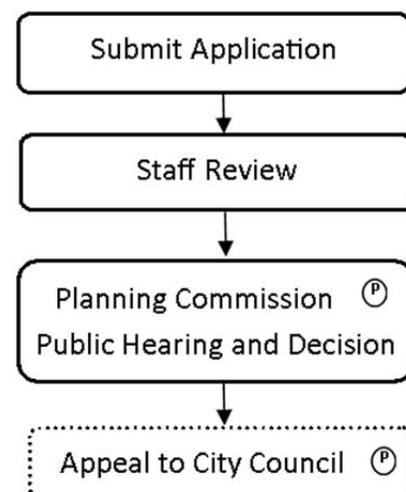
These types of applications allow for a variance from the terms and provisions of the UDC. See UDC Section 50-37.9 for more information.

#### Starting the Application Process

Submit your application materials to the One Stop Shop, Room 210 City Hall, by the Planning Commission Deadline. Your application must include the following:

- Application Cover Sheet
- Required fee
- Evidence that the requested variance will not have a negative impact
- A statement of need establishing practical difficulty
- A site plan with accurate depiction of the lot size, configuration, and requested variance area
- Materials for specific variances:
  - Variances to lot size in unsewered areas:* a permit or letter of intent to issue a permit for on-site sewer treatment from the county
  - Variances to reduce setbacks:* a landscaping and buffering plan
  - Variances to flood plain regulations:* documentation regarding flood levels and flood protection may apply
  - Variances to shoreland regulations:* A plan to mitigate the impacts of the variance on shoreland areas
  - Variances within Skyline Parkway Overlay:* see Skyline Parkway Materials in [Appendix](#)

### Variance



Ⓟ Indicates Public Hearing Required

### Important Dates

**Application Deadline:**

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**Sign Notice Placed:**

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**Planning Commission:**

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**Effective\*:**

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*\*Please note that these dates are approximate guidelines and may change*

### Public Notice

A mail notice will be sent by the City to property owners within 350 feet.

- You are required to post a sign notice on the property at least two weeks before the date of the public hearing. See UDC Section 50-37.1.H for information on size, placement, and content of each sign; you may want to contact a sign company or printing company to have the sign made. You must provide evidence that the signs

were in place; submit photo(s) of the signs to the Planning Division at least two weeks before the date of the public hearing.

### **Staff Review**

Planning staff will evaluate your application and prepare a staff report. When considering a recommendation for a variance, Planning Staff generally review the legal minimum requirements for a variance established by State Statute (literal interpretation of the UDC would result in exceptional or peculiar practical difficulty, special circumstances exist that are unique to the property, the situation was not created by the applicant, variance is necessary and not simply a convenience to the applicant, etc.), the standards specific to the type of variance being sought, any additional UDC criteria, and other related factors.

### **Planning Commission Hearing and Decision**

You will be notified when a Planning Commission hearing is scheduled for your application. Planning Commission meetings are scheduled at 5:00 pm on the second Tuesday of each month.

The Planning Commission will review the application, conduct a public hearing, and make a decision to adopt, adopt with modifications, or deny the application.

If approved, you will receive an Action Letter documenting approval.

- Bring a copy of the Action Letter and approved plans when you submit your building permit.

*Note that other city codes may apply to your project. Please be aware of any applicable Building code (Construction Services Division), Fire code (Life Safety Division), and stormwater/engineering (Engineering Division) regulations. The zoning approval may be only the first step in a several step process.*

owner of property located partly or entirely within 350 ft. of the area to be rezoned. Failure to give mailed notice as required by this section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this section has been made.

(c) **Sign notice** means a sign with minimum dimensions of 24 in. by 30 in. posted as close as reasonably possible to each street frontage on the applicant's property with the text between 3 and 5 ft. above grade level, with a title line reading "Zoning Notice" in letters at least 3 in. tall, and with the remainder of the text in letters at least ½ in. tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way.

**2. Content of Notice**

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;
- (c) A narrative description of the project including the proposed land uses, size (in sq. ft.) and height (in ft. and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing.

**3. Special Notice Provision for Appeals**

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal.

**I. Public Hearings**

- 1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law.
- 2. Attendance shall be open to the public.
- 3. All hearing and decision timeframes shall comply with MSA 15.99.

**50-37.9 Variance**

This section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

**A. Application**

An application for a variance shall be filed pursuant to Section 50-37.1.B.

**B. Procedure**

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections 50-37.9.C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.1.P or a development agreement regarding the design, construction and operation of the project, to protect the Comprehensive Land Use Plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit.

**C. General Variance Criteria**

Unless different or inconsistent criteria or limitations are stated in subsections 50-37.9.D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in peculiar and exceptional practical difficulties or exceptional or undue hardship to the property owner;
2. The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant;

**Variance**



**P** Indicates Public Hearing Required

## 50-37: Review and Approval Procedures

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3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;
6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below.

### **D. No Use Variances**

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located.

### **E. Variances to Lot Size in Unsewered Areas**

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

### **F. Variances for Two-Family Dwellings in the R-1 District**

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;
2. A variance reducing the minimum dimensional requirements by up to 10%.

### **G. Permitted Parking Variances**

#### **1. Residential Districts**

- (a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:
  - (i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;
  - (ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a showing of hardship.
- (b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to

protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:

- (i) On a non-corner lot with frontage of less than 50 ft., only one parking area may be located outside the R district parking area;
- (ii) On a corner lot with frontage of less than 50 ft., the variance may allow for compliance with the off street parking requirements of this Chapter;
- (iii) On a corner or non-corner lot with frontage of 50 ft. or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30% of the front yard;
- (iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;
- (v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;
- (vi) Economic considerations, in whole or part, shall not constitute a hardship.

**2. Mixed Use, Form and Special Purpose Districts**

In Mixed Use, Form and Special Purpose Districts, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled.

**H. Variances to Reduce Setbacks**

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter.

**I. Variances in the MU-C District**

1. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than 10%. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way.
2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four ft. in height and screen out at least 50% of the view of any parking area, unless the setback is reduced to less than 5 ft., in which case it shall screen out at least 75% of the view of the parking area.

**J. Variances in A-O Airport Overlay District**

Variations shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern.

**K. Variances from Flood Plain Regulations**

Variations to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

**1. In a floodway:**

- (a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
- (b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
- (c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
- (d) Variations shall be limited to giving the applicant a minimal reasonable use of the site.

**2. In a flood fringe:**

- (a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
- (b) Variations shall not produce any adverse effects to the flood capacity or efficiency of the watercourse.

**3. Flood insurance notice and recordkeeping**

The building official shall notify the applicant for a variance that:

- (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
- (b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variations issued in its annual or biennial report submitted to the administrator of the national flood insurance program.

**4. General considerations**

The city shall consider the following factors in granting variations and imposing conditions on permits and variations in flood plains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;

- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the Comprehensive Land Use Plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site.

**L. Standards for Variances in Shorelands**

No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

**M. Reconstruction of a Non-Conforming Building**

A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 50% of its reproduction value, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city.