

PUBLISHED DECEMBER 4, 2014

OFFICIAL PROCEEDINGS

Excerpt from the minutes of the Duluth City Council meeting held Monday, November 24, 2014, at 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

ORDINANCE NO. 10340

AN ORDINANCE AMENDING SECTIONS 50-24.2, 50-24.7, AND 50-37.9 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING CHANGES MADE TO REQUIRED OFF-STREET PARKING SPACES AND VARIANCES.

The city of Duluth does ordain:

Section 1. That Section 50-24.2 of the Duluth City Code, 1959, as amended, be amended as follows:

50-24.2 Required parking spaces.

In all districts there shall be provided, at the time any building or structure is erected, except as provided in Section 50-24.5, *Calculation of parking spaces*, the number of off-street parking spaces shown in Table 50-24-1, unless an exemption from or variation of this requirement is provided in another section of this Chapter.

Table 50-24-1: Off-Street parking Spaces Required	
Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
RESIDENTIAL USES	
Dwelling, one-family	1 space per dwelling unit
Dwelling, two-family	
Dwelling, townhouse	
Dwelling, live-work Co-housing facility	
Manufactured home park	
Dwelling, multi-family	1.25 space per dwelling unit
Assisted living facility (elderly)	1 space per 3 habitable units
Residential care facility	1 space per 9 residential care beds, but not less than 2 spaces
Rooming house	1 space per habitable unit
PUBLIC, INSTITUTIONAL AND CIVIC USES	
Bus or rail transit station	No requirement
Business, art, or vocational school	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
Cemetery or mausoleum	No requirement
Club or lodge (private)	2.5 spaces per 1,000 sq. ft. of floor area
Government building or public safety facility	As determined by land use supervisor based on anticipated use and neighborhood impacts
Hospital	2 spaces per 1,000 sq. ft.
Medical or dental clinic	4 spaces per 1,000 sq. ft. of gross floor area
Museum, library or art gallery	1 space per 1,000 sq. ft. of gross floor area
Nursing home	1 space per 6 beds
Park, playground or forest reserve	No requirement
Religious assembly	1 space per 4 seats or per 100 sq. ft. in main auditorium, whichever is greater
School, elementary	1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater
School, middle or high	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
University or college	2 spaces per 1,000 sq. ft. of office, research and library area plus 1 space per 125 sq. ft. of auditorium space.
Other community facility or institutional support uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts

Table 50-24-1: Off-Street parking Spaces Required

Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
COMMERCIAL USES	
Adult bookstore	2.5 spaces per 1,000 sq. ft. of gross floor area
Adult entertainment establishment	5 spaces per 1,000 sq. ft. of gross floor area
Agriculture	No requirement
Automobile and light vehicle repair and service	2 spaces per 1,000 sq. ft. of gross floor area
Automobile and light vehicle sales, rental or storage	2 spaces per 1,000 sq. ft. of gross floor area
Bank	3.5 spaces per 1,000 sq. ft. of gross floor area
Bed and breakfast	1 space for manager plus 1 space per habitable unit
Building material sales	1 space per 1,000 sq. ft. of gross floor area
Business park support activities	2 spaces per 1,000 sq. ft. of gross floor area
Convention and event center	1 space per 4 seats or per 100 sq. ft. in main auditorium, whichever is greater
Daycare facility	1 space per 5 persons care capacity
Data center	1 space per 1,000 sq. ft. of gross floor area
Filling station	4 spaces per 1,000 sq. ft. gross floor area plus 1 per service stall
Funeral home or crematorium	1 space per 50 square feet of floor space in slumber rooms, parlors or individual funeral service rooms
Garden material sales	1 space per 1,000 sq. ft. of gross floor area
Grocery store	3 spaces per 1,000 sq. ft. of gross floor area
Golf course	2.5 spaces per 1,000 square feet of clubhouse area
Hotel or motel	2 spaces per 3 guest rooms plus 1 per 200 sq. ft. of gross floor area in all accessory uses including restaurants and meeting rooms
Indoor entertainment facility	2.5 spaces per 1,000 sq. ft. of gross floor area.
Kennel	1 space per 1,000 sq. ft. of gross floor area
Marina or yacht club	2.5 spaces per 1,000 sq. ft. of clubhouse area, plus 1 per 10 boat slips
Mini-storage facility	1 space per 20 storage units
Office	2.5 spaces per 1,000 sq. ft. of gross floor area
Parking lot or parking structure (primary use)	No requirement
Personal service or repair	2.5 spaces per 1,000 sq. ft. of gross floor area
Preschool	1 space per 5 persons care capacity
Restaurant	6.5 spaces per 1,000 sq. ft. of gross floor area
Retail store	3 spaces per 1,000 sq. ft. of gross floor area
Riding stable	No requirement
Seasonal camp or cabin	1 space for every two beds, or for each cabin or sleeping unit, whichever is greater
Theater	1 space per 6 seats or per 100 sq. ft. in main auditorium, whichever is greater
Tourist or trailer camp	2 spaces per 3 sleeping rooms, suites, or trailer spaces
Truck or heavy vehicle sales, rental, repair or storage	1 space per 1,000 sq. ft. of gross floor area
Vacation dwelling unit	1 space for 1-2 bedrooms, 2 spaces for 3-4 bedrooms, 3 spaces for 5+ bedrooms
Veterinarian or animal hospital	2.5 spaces per 1,000 sq. ft. of gross floor area
Other commercial use not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
INDUSTRIAL USES	
Airport and related facilities	As determined by airport management
<ul style="list-style-type: none"> • Electric power or heat generation plant • Electric power transmission line • Junk and salvage services • Major utility or wireless communication tower • Radio or television broadcasting tower • Railroad or shipyard and related facilities • Solar or geothermal power facility (primary use) • Truck freight or transfer terminal • Water or sewer works • Wind power facility (primary use) 	No requirement

Table 50-24-1: Off-Street parking Spaces Required

Use	Requirement* (May Be Adjusted to 30% Less or 50% More)
<ul style="list-style-type: none"> Bulk storage not listed Contractor's shop and storage yard Dry cleaning or laundry plant Recycling collection point (primary use) Solid waste disposal or processing facility 	1 per 1,000 sq. ft. of gross floor area
<ul style="list-style-type: none"> Manufacturing, light manufacturing, heavy manufacturing, hazardous or special Storage warehouse Water-dependent manufacturing, light or heavy Wholesaling 	1 per 1,000 sq. ft. of gross floor area
Research laboratory	As determined by land use supervisor based on anticipated use and neighborhood impacts
Other industrial uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
ACCESSORY USES	
Accessory bed and breakfast	1 space for primary use dwelling; plus 1 space per habitable unit
Accessory caretaker quarters	1 space
All other accessory uses	No requirement
TEMPORARY USES	
Temporary real estate sales office	2 spaces
All other temporary uses	No requirement

*The parking space requirement may be modified by Section 50-18.5 (Higher Education Overlay District), Section 50-24.3 (Adjustment to required off-street parking) and Section 50-24.4 (Maximum parking spaces).

Section 2. That Section 50-24.7 of the Duluth City Code, 1959, as amended, be amended as follows:
 50-24.7 Parking lot design standards.

A. General standards.

The design of required off street parking areas and spaces shall meet the standards shown in Table 50-24-4;

Table 50-24-4: Parking Design Standards		
Parking Space Size*		
Size of Car	Minimum Size of Parking Space	
Small	8.5 ft. x 15 ft.	
Standard	9 ft. x 17 ft.	
Aisle Widths		
Angle of Parking	Minimum Width of Aisle	
	One-Way	Two-Way
Parallel/no parking	11 ft.	21 ft.
30 degree	11 ft.	21 ft.
45 degree	13 ft.	23 ft.
60 degree	18 ft.	24 ft.
75 degree	20 ft.	24 ft.
90 degree	20 ft.	24 ft.
Permitted Percentage of Small Car Spaces (Applies to lots with more than 5 spaces)		
Size of Parking Lot	Maximum Percentage of Small Cars	
6 to 100 spaces	40%	
100 to 149 spaces	45%	
150 or more spaces	50%	
Required Surface Treatment/Paving		
Zone District	Requirement	

Table 50-24-4: Parking Design Standards

All residential district parking areas not in lawful existence on June 1, 2009.	Surfaced in a dust free, hard surface material such as concrete or bituminous, or pervious paving materials, except for rear yards, which may be surfaced in aggregate materials, compressed aggregates or similar surfaces.
All mixed use and special purpose districts	All parking areas shall be surfaced in a dust free, hard surface material such as concrete or bituminous. Pervious paving material shall be approved by the city engineer.

*The area set aside for a parking space may encroach beyond the face of a curb a maximum of 1.5 ft., provided that (a) it does not include trees, posts, or other obstructions that would prevent a vehicle from fully utilizing the space, and (b) it is not included in required open space, landscape area requirements, or required pedestrian walkways.

B. Parking lot and driveway entrances.

All parking lot and driveway entrances must conform to the design specification regulations of the city engineer;

C. Snow storage areas.

A portion of the each accessory surface parking area shall be designated for snow storage. The areas required to meet the minimum parking requirements of this Section 50-24 shall not be used for snow storage. Snow storage areas may be landscaped if the vegetation is selected and installed so as not to be harmed by snow storage. Snow storage areas shall not count towards those landscape areas required by Section 50-25 unless it they are integrated with a side or rear buffer required by Section 50-25;

D. Parking lot walkways.

Each surface parking area that (a) serves a multi-family residential, commercial, public, institutional, civic, or mixed use, and (b) contains 50 or more parking spaces, and (c) contains any parking spaces located more than 300 feet from the front façade of the building shall contain at least one pedestrian walkway from allowing pedestrians to pass from the row of parking furthest from the primary building façade to the primary building entrance or a sidewalk allowing the pedestrian to reach the primary building entrance without crossing additional driving spaces or aisles. The required walkway must be at least five feet wide, shall not be located within a driving aisle, and shall be located in a landscaped island running perpendicular to the primary building façade if possible. If located in a landscaped island, the minimum width of the island shall be increased by five feet to accommodate the walkway without reducing the amount of landscaped area. If any parking space in the parking aisle located furthest from the primary structure is more than 200 feet from the walkway, additional similar walkways shall be required within 200 feet of those spaces. If there is a public sidewalk along the street frontage located within 50 feet of any required walkway, the walkway shall connect to that sidewalk;

E. Tandem or In-Line Parking.

Tandem or in-line parking, or other similar arrangements that involve the placement of two or more parking spaces in a row directly behind one another so that one parking space is blocking access for other parking spaces, is not allowed for required off-street parking spaces. This provision does not apply to required off-street parking spaces within enclosed structures, such as garages or parking structures.

Section 3. That Section 50-37.9 of the Duluth City Code, 1959, as amended, be amended as follows:

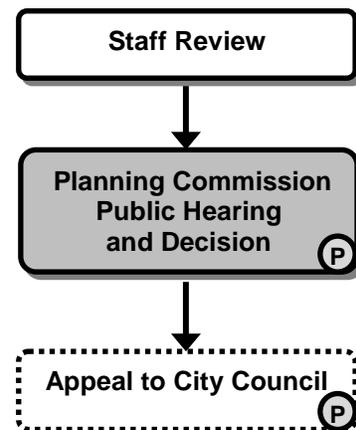
50-37.9 Variance.

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

Variance



(P) Indicates Public Hearing Required

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 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 50-37.2.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 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 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;
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, or Table 50-27.4 for a permitted sign in the 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 ten percent;

G. Variances from parking and loading regulations.

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 feet, only one parking area may be located outside the R district parking area;
- (ii) On a corner lot with frontage of less than 50 feet, 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 feet or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30 percent 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. Reducing required parking spaces.

Except as provided in 50-37.9.G, 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;

3. Exceeding required parking spaces.

Variances from the maximum parking limits provided in 50-24.4 shall not exceed 200 percent of the minimum requirement provided in Table 50-24.1;

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 ten percent. 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 feet in height and screen out at least 50 percent of the view of any parking area, unless the setback is reduced to less than five feet, in which case it shall screen out at least 75 percent of the view of the parking area;

J. Variances in A-O airport overlay district.

Variances 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.

Variances 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) Variances 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) Variances 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; and
 - (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 variances 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 variances and imposing conditions on permits and variances 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; and
 - (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
5. Submittal of hearing and decision notices to the DNR.
- (a) The planning commission shall submit to the commissioner of the DNR a copy of the application for proposed variance sufficiently in advance so that the commissioner will receive at least ten days' notice of the hearing. Such notice shall specify the time, place, and subject matter of the hearing and shall be accompanied by such supporting information as is necessary to indicate the nature and effect of the proposed use. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;
 - (b) A copy of all decisions granting variances shall be forwarded to the commissioner of the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;
6. Additional federal emergency management agency conditions.
The following additional conditions of FEMA must be satisfied:
- (a) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
 - (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
7. Conditions attached to variances,
Upon consideration of the factors listed above and the purpose of this Section, the planning commission may attach such conditions to the granting of variances and permits as it deems necessary to fulfill the purposes of this Section. Such conditions may include, but are not limited to, the following:
- (a) Modification of waste treatment and water supply facilities;
 - (b) Limitations on period of use, occupancy, and operation;
 - (c) Imposition of operational controls, sureties, and deed restrictions;
 - (d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures; and
 - (e) Floodproofing measures, in accordance with the State Building Code and this chapter. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors;

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 nonconforming 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 60 percent of its assessed market value as determined by the city assessor, 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.

Section 4. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: January 3, 2015)

Councilor Russ moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Russ, Sipress and President Larson -- 8

Nays: None -- 0

Absent: Councilor Krug -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 24, 2014
Approved November 24, 2014
DON NESS, Mayor