

Variance Criteria Guidance – City of Fairmont

The underlined questions below represent the required statutory criteria, pursuant to Minn. Stat. § 462.357, subd. 6, which must be considered and answered affirmatively in order for the Board of Zoning Appeals or the City Council, as applicable, to grant a variance application. For purposes of establishing a record, a majority of the members of the governing body must agree upon the answers given to each question below. The following guidance is intended to assist the governing body in developing its written findings on each of the below underlined statutory criteria:

1) Is the variance in harmony with the purposes and intent of the ordinance?

Some of the more common purposes and intent of zoning ordinances, which may be considered in evaluating this criterion include, but are not limited to, the following:

- a. To promote the public health, safety, morals, comfort and general welfare;
- b. To conserve and protect property and property values;
- c. To secure the most appropriate use of land; or
- d. To facilitate adequate and economical provisions for public improvements.

2) Is the variance consistent with the Comprehensive Plan?

What is the future land use category for the subject property?

Does the request align with this category and other provisions of the Comprehensive plan?

3) Does the proposal put property to use in a reasonable manner?

Would the request put the property to use in a reasonable way but cannot do so under the rules of the ordinance? It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of this factor is whether the request to place a building there is reasonable. For example, is it reasonable to put a building in the proposed location?

4) Are there unique circumstances to the property not created by the landowner?

Are there unique physical characteristics of the property not caused by the landowner? The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner (i.e. size of the lot, shape of the lot, layout of the building, topography, trees, wetlands, etc.). For example, when considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees?

5) Will the variance, if granted, retain the essential character of the locality?

If granted, will the use of the land or the structure be of appropriate scale, in a suitable location, or otherwise be consistent with the surrounding area? For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

6) Are there other considerations for the variance request besides economics?

State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the statutory factors are met.

If there are affirmative answers to questions 3, 4, and 5, the application then satisfies the practical difficulties test, and if the answer is yes to this question, then in that event, the application may proceed if the other criteria (1 and 2) above are also met.

If there are not affirmative answers to questions 3, 4, and 5, then the practical difficulties test is not satisfied, and if the answer to this question is no, then in that event, the application must be denied for failure to meet the practical difficulties test.

Other Considerations:

Neighborhood opinion. Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While the BZA or City Council, as applicable, may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the above statutory factors. Residents can often provide important facts that may help the governing body in addressing the above questions, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision.

Conditions. A city may impose a condition when it grants a variance so long as the condition is directly related to and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.