

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;

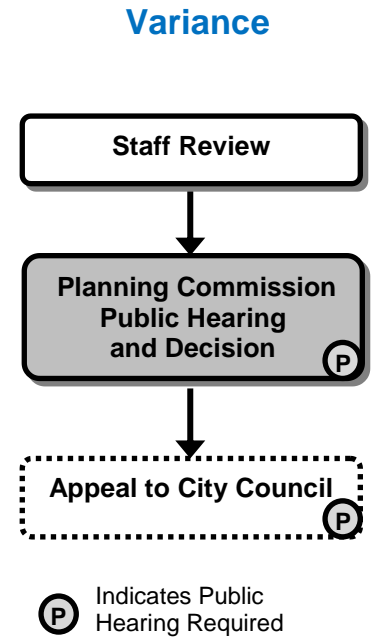
B. Procedure.

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 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 practical difficulties to the property owner;
2. The plight of the property owner is due to circumstances unique to the property, and not created by the property owner or the property owners predecessors-in-interest;
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 property owner proposes to use the property in a reasonable manner not permitted by this code;



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, and will not alter the essential character of the locality;
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;
9. Economic considerations alone shall not constitute a practical difficulty;

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 a residential district where parking is not permitted by Section 50-24.6.B for lots meeting all the following:

- (i) The distance between the dwelling and the public right of way exceeds 18 feet; and
- (ii) The position of the principle structure on the lot does not permit access to the side or rear yard; and
- (iii) There is no improved alley or street providing access to the side or rear yard; and
- (iv) There is no permitted overnight parking on any street within 150 feet of the property;

(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) The maximum variance that can be granted shall not exceed 55% of the lot width;
- (ii) A paved walkway at least 3 feet wide shall be provided that links the front entrance of the dwelling and the street;
- (iii) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties and the street, where screening the street view is possible;
- (iv) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas; such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);
- (v) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

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. In addition to meeting the general variance criteria in 50-37.9C, a parking study that provides justification for the number of off-street parking spaces proposed is required. It must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations. (Ord. No. 10460, 7-11-2016, § 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. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10153, 5-14-2012, § 16; Ord. No. 10225, 5-28-2013, § 11; Ord. No. 10285, 3-10-2014, § 2; Ord. No. 10340, 11-24-2014, § 3; Ord. No. 10460, 7-11-2016, § 1, Ord. No. 10509, 6-12-2017, §7)