

TOWNSHIP COOPERATIVE PLANNING ASSOCIATION -- CONSIDERATION OF VARIANCE REQUEST APPLICATION

4111 11th Avenue SW Room 10
Rochester, MN 55902

-- TCPA --

(507) 529-0774
Fax: (507) 281-6821

TOWNSHIP _____ DATE _____

Property Address _____

_____ City _____ State _____ Zipcode _____

Legal Property Description _____

Property Owner _____ Telephone # _____

_____ City _____ State _____ Zipcode _____

Request Description (See back of page for submittal requirements) _____

Reason for Request _____

Existing Use of Property _____

Present Zoning Classification _____

Has a variance request on the property been previously sought? Yes No

If Yes, when? _____

Signature of Applicant _____ Date _____

Filing Fee \$ _____, made payable to TCPA

.....

Public Hearing was held by the Town Board of Appeals on _____

After consideration of the Public Hearing and the recommendations of the Zoning Administrator,

_____ Township Board of Appeals, Approved Denied for the

following reason(s) _____

Appeals Board Chairperson

Attest _____
Township Clerk

Section 4.08 VARIANCES:

A variance from a provision of this zoning ordinance may be granted by the Board of Adjustment in a case in which the zoning ordinance is found to impose particular hardship to a property owner and that there are exceptional circumstances or conditions applying to the intended use of the property in question that do not apply generally to other similar properties in the same zoning district. The Board of Adjustment may not permit as a variance any use that is not permitted for the property in the district where the affected person's land is located.

A. Criteria for Granting an Area Variance: When considering an application for an Area Variance, the Board must determine if the request will result in a practical difficulty and the following factors shall be considered:

1. That there are exceptional circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district.
2. That authorizing such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this zoning ordinance or the public interest.
3. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation and that the alternative of consideration of a map amendment changing the zoning district classification would be impractical.
4. That the variance requested is the minimum variance which would alleviate the hardship.
5. Whether the request will have an adverse effect on government services.
6. Whether the requested variance will cause a substantial change in the character of the neighborhood or will result in a substantial detriment to neighboring properties.
7. Whether there is another feasible method to alleviate the need for the variance (economic considerations play a role in the analysis under this factor).
8. How the practical difficulty occurred including whether the landowner created the need for the variance.
9. Whether in light of all of the above factors, allowing the variance would serve the interests of justice.

If a variance is being applied for after the development has occurred, refer to subsection E. for additional criteria relating to After-the-fact Variances.

B. Criteria for Granting a Use Variance: A use variance may be granted only in the event that the Board of Adjustment finds that the limitations on uses in the zoning district applicable to the site cause particular hardship to the property owner and finds evidence that all the following facts and conditions exist:

1. That there are exceptional and 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.
2. 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. The possibility of increased financial return shall not in itself be deemed sufficient to warrant a variance.
3. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this zoning ordinance or the public interest.
4. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation and that the alternative of consideration of a map amendment changing the zoning district classification would be impractical.
5. That the variance requested is the minimum variance which would alleviate the hardship.

If a variance is being applied for after the development has occurred, refer to subsection E. for additional criteria relating to After-the-fact Variances.

C. Variances in a Floodway - When deciding a variance pertaining to Sections 9.02, 9.04, 9.06, and 9.08 Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts, once the appropriate use/area variance criteria set forth above have been considered, the following additional factors shall be considered:

1. That the granting of such variance will not increase flood heights, create additional threats to public safety, necessitate extraordinary public expense, create nuisances, or increase the threat of damage to property or the environment from the volume or velocity of runoff.

If a flood plain variance is being applied for after the development has occurred, refer to subsection E. for additional criteria relating to After-the-fact Variances.

D. Variances in Shoreland District - When deciding a variance to the Shoreland District regulations, once the appropriate use/area variance criteria set forth above have been considered, the following additional factors shall be considered:

1. Except as provided for in the section on use variances, no variance to the standards of the shoreland district shall have the effect of allowing in any district uses prohibited in that district
2. No variance in the shoreland district shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area.
3. No variance in the shoreland district shall permit standards lower than those required by State law.
4. In areas where development exists on both sides of a proposed building site, water and road setbacks may be varied to conform to the existing established setbacks.
5. In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property.
6. Where homes incorporate a method of sewage disposal other than soil absorption, water setbacks may be reduced by one-third (1/3).
7. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

If a shoreland variance is being applied for after the development has occurred, refer to subsection E. for additional criteria relating to After-the-fact Variances

E. After-the-Fact Variances - If a property owner seeks a variance after the development at issue has already been completed, this is known as an "after-the-fact" variance request. In that event, once the appropriate use/area variance criteria set forth above have been considered, the following additional criteria must be considered by the Board in deciding whether or not to grant the variance request:

1. Whether the property owner acted in good faith;
2. Whether the property owner attempted to comply with the law by obtaining a building permit;
3. Whether the property owner obtained a permit from another entity that violated the law;
4. Whether the property owner made a substantial investment in the property;
5. Whether the property owner completed the repairs/construction before the property owner was informed of the impropriety;
6. Whether the nature of property is residential/recreational and not commercial;
7. If lakefront property, whether there are other similar structures on the lake;
8. Whether the minimum benefits to the county appear to be far outweighed by the detriment the appellant would suffer if forced to remove the structure.
9. Whether in light of all of the above factors, allowing the variance would serve the interests of justice.

After-the-fact variances have the potential to encourage property owners to intentionally violate the zoning ordinances. Property owners who seek after-the-fact variances must prove the facts underlying each of these criteria by clear and convincing evidence. If in the judgment of the Board of Adjustment an applicant for a variance has acted in bad faith, or has intentionally or neglectfully violated the zoning ordinance, the Board of Adjustment shall deny the requested variance.