

Section 95-020 Variances and Appeals

Variance: Relief from certain provisions of this Ordinance, when due to the particular physical surroundings, shape or topographical condition of the property, compliance would result in practical difficulties upon the property owner. A variance shall not be used to permit a use in a district where it is not allowed under the terms of this Ordinance. Variances shall only be granted in accordance with M.S. 462.

1. The Planning Commission shall order the issuance of variances from the terms of any official controls including restrictions placed on non-conformities, with City Council approval. All such variances shall be granted in accordance with M.S. Chapter 462. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases where there are practical difficulties in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the Comprehensive Land Use Plan. The Planning Commission shall consider the criteria set forth below when hearing and making recommendation upon a variance request:
 - a. Has the applicant demonstrated a practical difficulty?
-Practical Difficulty: the property cannot be put to a reasonable use under conditions allowed by the Zoning Ordinance. Economic considerations alone do not constitute Practical Difficulties.
 - b. Are there exceptional circumstances unique to this property, which were not created by the land owner?
 - c. Can the variance be granted without upsetting the purpose and intent of the Zoning Ordinance?
 - d. Can the variance be granted without altering the essential character of the surrounding area?
2. The Planning Commission must make an affirmative finding on all of the four criteria listed above in order to make a recommendation to the Board of Adjustment and Appeals to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied. A variance shall not be granted for a use that is not permitted under this ordinance.
3. The Commission may impose conditions upon a variance that relate to the purposes and objectives of this Ordinance. If conditions are imposed, the variance shall not be effective until the conditions are fully complied with. A conditional variance shall be in effect only as long as the condition is complied with. If a condition is not complied with, the variance may be revoked and the City may pursue enforcement remedies as set forth in "Introduction to Planning and Zoning".
4. Procedure for applying for a Variance:
 - a. An applicant desiring a variance shall fill out and submit to the Nevis Zoning Administrator a completed Variance Request form, copies of which are available from the Zoning Administrator. The appropriate fee shall be paid in order for the application to receive consideration by the Planning Commission.
 - b. The Zoning Administrator shall make a recommendation, in writing, to the Planning Commission, and forward the request for their review.

- c. The Planning Commission shall hold a public hearing in accordance with M.S. 462 and the provisions of this Ordinance.
- d. The Planning Commission will forward their recommendation to the Nevis City Council within sixty (60) days after receiving the application. If it recommends the variance, the Commission may impose conditions (including time limits) it considers necessary to protect the public health, safety and welfare and such conditions may include a time limit for the use to exist or operate.
- e. The Nevis City Council will act upon the request within 30 days of receipt from the Commission.
- f. An application for a variance shall not be resubmitted for a period of six months following denial.

5. Procedure for filing an Appeal:

- a. An appeal of an administrative decision made in the enforcement of this Ordinance shall be made by filling out and submitting to the Zoning Administrator an Application for Appeal, which is available from the Zoning Administrator. The appropriate fee shall be paid in order for the application to receive consideration by the Board of Adjustment and Appeals. Such appeal shall be heard by the Board of Adjustment and Appeals within sixty (60) days of the date that such complete application is submitted to the Zoning Administrator.
- b. A variance becomes null and void if a building permit is not issued or substantial construction (25%) has not begun within 5 years of the approval date. Applicants may apply for an extension if requested in writing before the expiration date and upon showing “good cause”.