

## **16.08.090: VARIANCES:**

- A. Generally: A variance is authorization for a property owner to depart from the literal requirements/development standards of a zoning ordinance as it applies to his/her land. The applicant has the burden of demonstrating that unnecessary hardship or practical difficulties will result from the literal application of the zoning ordinance to the applicant's property.

Variance requests that are within ten percent (10%) deviation from the development standards of this title are considered minor administrative requests and are reviewed by the planning director. Administrative variances follow a modified application.

A variance, once granted, shall run with the land. All privileges granted pursuant to a variance application shall be exercised within three hundred sixty five (365) days of granting the variance unless otherwise provided.

- B. Authority: The commission shall have the discretionary authority to approve, conditionally approve, continue within allowed time frames, or deny a variance. Variations under this section allow for consideration of land use regulations only, and do not include building code variations.

C. Application Requirements:

1. All applicants shall meet with planning department staff to discuss the application and procedure prior to completing the application. Once the application is complete (but prior to signing and making copies) it is strongly recommended that the applicant meet again with planning department staff to review the application for accuracy and detail. If a meeting is impractical, the applicant shall provide a draft copy to the planning department for review.
2. All sections of the application must be complete and accurate or the application may be delayed to allow the necessary information to be obtained.
3. The required completed application form and a site plan showing the applicant's intent to meet the variance application and site plan requirements, including a signature of at least one owner of record, or if the property is being leased or purchased, a letter from the landowner stating approval for application of the variance or a copy of the lease agreement of the subject property, shall be submitted.

- D. Application Review: The director shall review each application to ensure that the proposal is consistent with the requirements of this title.

E. Hearing:

1. The commission shall hold a public hearing no more than sixty five (65) days after the filing of a complete application, and shall give notice of time and place and purpose thereof by mailing a notice, pursuant to this title.
2. The commission shall hear and consider evidence and facts from any person at the public hearing, or shall consider written communication from any person relative to the proposed variance.

F. Findings: In order to approve a variance, the commission shall make the following findings:

1. The property is characterized by an extraordinary or exceptional situation or condition, such as exceptional narrowness, shallowness or shape, or it has exceptional topographic conditions at the time of enactment of the regulations.
2. The strict application of the regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property.
3. Granting of this variance will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity.
4. The proposed variance is consistent with the intent and purpose of this title.

The applicant shall have the burden of proof by a preponderance of evidence to provide facts supporting the proposed variance. For purposes of legal clarity, this shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to

be determined by the commission and, if on appeal, by the board. Additionally, the applicant shall provide adequate information in the application and on the site plan to substantiate the findings required in this section.

G. Decision:

1. Following the public hearing, the commission shall determine if there is adequate evidence in the record to support the findings required by this section and shall approve, conditionally approve, modify, continue within allowed time frames, or deny the variance request.
2. The applicant may request a continuance of any application for a variance to a future meeting. A continuance suspends the time lines established in Nevada Revised Statutes and this title.
3. If the commission determines that practical difficulties exist and variance from paving and grade gravel road construction is warranted, conditions of approval must include:
  - a. Road specifications that are no less than the minimum access road requirements.
  - b. Justification for either cost sharing or no cost sharing.
  - c. The amount of cost sharing and how and when and for what period of time.

H. Conditions Of Approval: The commission, in approving any variance, may require conditions under which the lot or parcel may be used or the building constructed which, in such commission's opinion, will prevent material damage or prejudice to adjacent properties. These conditions become a part of the public record and approval process.

I. Expiration; Termination:

1. An approved variance must be developed or exercised within three hundred sixty five (365) days of the date of approval. Developed or exercised includes, without limitation, submittal of permit applications, application for building permits, construction of the project, etc. If an approved variance is not developed or exercised within three hundred sixty five (365) days, then, without further action, the variance shall be null and void and such development activity shall not be made of the property except on the granting of a new variance.
2. In the event that circumstances beyond the control of the applicant result in a failure to complete applicable variance conditions and develop or exercise the variance prior to the expiration date, the applicant may request in writing one single extension of the expiration date for a period not to exceed three hundred sixty five (365) days from the original date of expiration. The written request for an extension shall be received by the planning department thirty (30) days prior to the expiration date. The director may approve a one year extension with the option of commission review.

J. Administrative Variances:

1. The planning director has the authority to grant an administrative variance for variances of less than ten percent (10%) in deviation from the area, size, required setbacks, building height and other similar development standards and requirements of the land use districts.
2. An administrative variance is not applicable to the age or size requirements of a manufactured home or the paving or bridge requirements of any land division.
3. Prior to consideration of an administrative variance the planning director shall provide written notice of the requested variance to each owner, as listed on the county assessor's records, of real property located within one hundred feet (100') of the exterior limits of the property in question as shown by the latest assessment rolls of the county. Notice by mail to the last known address of real property owners as shown by the assessor's records shall be sufficient.
4. The planning director shall consider the effect of any requested variance. Provided that the deviation will not impair the purpose of the zoning district or any other provisions of this code the planning director may grant the administrative variance.
5. The administrative variance is subject to the same expiration deadline as a variance and has the same requirement for an extension of the deadline. (Bill 2012-F; Bill 2010-G, 2010: Bill 2007-I, 2007: Bill 2006-G, 2006: Bill 2005-F § 2.2, 2005)