



# VARIANCE (LAND USE) APPLICATION HANDOUT

City of the Village of Minnetonka Beach  
2945 Westwood Road – P.O. Box 146  
Minnetonka Beach, MN 55361  
[www.ci.minnetonka-beach.mn.us](http://www.ci.minnetonka-beach.mn.us)  
952-471-8878

# Land Use Application

## City of Minnetonka Beach

2945 Westwood Rd., P.O. Box 146, Minnetonka Beach, MN 55361

(952)471-8878 FAX (952)471-7416

Date \_\_\_\_\_

### Applicant Information:

Name \_\_\_\_\_ Tel. (w) \_\_\_\_\_

Address \_\_\_\_\_ Tel. (h) \_\_\_\_\_

Email Address \_\_\_\_\_ Mobile/Cell \_\_\_\_\_

Applicant's Architect \_\_\_\_\_

Applicant's Surveyor/Engineer \_\_\_\_\_

Applicant's Builder \_\_\_\_\_

### Type of Application:

\_\_\_\_\_ Variance          \_\_\_\_\_ Amendment to Zoning Code          \_\_\_\_\_ Appeal

\_\_\_\_\_ Conditional Use Permit          \_\_\_\_\_ Subdivision          \_\_\_\_\_ Other

### Property Information:

Property Address \_\_\_\_\_ PID# \_\_\_\_\_

Owner \_\_\_\_\_ Date Acquired \_\_\_\_\_

Email Address \_\_\_\_\_

Describe request in detail (type of variance, etc.), including unusual property conditions/practical difficulties imposed by City Code: (Use back if needed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Proposed Schedule:

Your application will be heard on the following dates provided all requested information is received:

\_\_\_\_\_ **Planning Commission Meeting**

\_\_\_\_\_ **City Council Meeting**

The following must be provided to City Hall (if checked) by the dates indicated in order for this application to be heard in accordance with the schedule stated above:

(Check) (Last Date Due)

\_\_\_\_\_ Fee for mailing labels of owners within 350 feet of the property. (City Staff)

\_\_\_\_\_ Current (current defined by Zoning Administrator) survey showing all existing and proposed improvements, and hardcover calculations on the site or other information requested by the City.

\_\_\_\_\_ 1 set of full-sized plans with surveys, 1 set 11 x 17 inch, and 1 electronic copy of plans and survey. These are to include all elevations (including ground level elevations) shown drawn to scale showing proposed request.

\_\_\_\_\_ Other \_\_\_\_\_

**Fee and Costs**

Application Fee: \$250.00 submitted with this Land Use Application.

Additional Costs: The applicant requests processing of this application and agrees to pay to the City of Minnetonka Beach within Thirty (30) days after billing statement mailed or delivered, the actual costs incurred by the City for engineering, planning and zoning, legal and inspection expenses reasonably and necessarily required by the City for the processing of the application.

**Such costs shall be in addition to the application fee.**

*Withdrawal of the application shall not relieve the applicant of the obligation to pay the costs incurred prior to withdrawal.*

**Applicant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Home Owner's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Office Use Only**

**Extension**    \_\_\_ Discussed with Applicant            \_\_\_ Letter sent            \_\_\_ Date

Application fee received on \_\_\_\_\_ (Date)    Check Number \_\_\_\_\_    Amount \_\_\_\_\_

Received by: \_\_\_\_\_ on behalf of the City.

Additional space if needed:

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## VARIANCES

Frequently Asked Questions  
(Reflects 2011 law change)

### **What is a variance?**

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

### **Who grants a variance?**

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council. For more information, see [Minn. Stat. § 462.357](#).

### **When can a variance be granted?**

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. For more information, see [Minn. Stat. § 462.357](#).

### **What kind of authority is the city exercising?**

A city exercises so-called “quasi-judicial” authority when considering a variance application. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

### **What is practical difficulties?**

Practical difficulties is a legal standard set forth in law that cities must apply the when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied. For more information, see [Minn. Stat. § 462.357](#).

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

### **What are the practical difficulties factors?**

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular 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 the first factor is whether the request to place a building there is reasonable.

The second factor is that the landowner's problem is due to circumstances unique to 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. 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.

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent 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.

### **Are there are other factors a city should consider?**

Yes. State statute provides variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. So, in addition to the three-factor practical difficulties test, a city evaluating a variance application should make findings as to (1) whether or not the variance is in harmony with the purposes and intent of the ordinance, and (2) whether or not the variance is consistent with the comprehensive plan.

### **What about economic considerations?**

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exists only when the three statutory factors are met.

### **What about undue hardship?**

"Undue hardship" was the name of the three-factor test prior to a May 2011 change of law. Effective May 6, 2011 Minnesota Laws, Chapter 19, amended [Minn. Stat. § 462.357, subd. 6](#) to restore municipal variance authority in response to *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. June 24, 2010). In *Krummenacher*, the Minnesota Supreme Court interpreted the statutory definition of "undue hardship" and held that the "reasonable use" prong of the "undue hardship" test was not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance.

**What did the 2011 law change?**

The 2011 law changed the first factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling. The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. The 2011 law also provides that: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.”

**Can a city grant a use variance?**

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located. For more information, see [Minn. Stat. § 462.357](#).

**Is a public hearing required?**

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

**What is the role of neighborhood opinion?**

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials 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 statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

**What is the role of past practice?**

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

**When should a variance decision be made?**

A written request for a variance is subject to Minnesota’s 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval. For more information, see [Minn. Stat. § 15.99](#).

**How should a city document a variance decision?**

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

**Can meeting minutes adequately document a variance decision?**

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

**Can a city attach conditions to a variance?**

By law, a city may impose a condition when it grants a variance so long as the condition is directly related 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 affect of excess height. For more information, see [Minn. Stat. § 462.357](#).

**What happens to the variance once granted?**

A variance once issued is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

Jed Burkett 2011/06

CITY OF THE VILLAGE OF MINNETONKA BEACH  
VARIANCE APPLICATION CHECKLIST  
PRACTICAL DIFFICULTIES DOCUMENTATION FORM

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Applicants must complete this form for all variance applications.

Minnesota State Statutes Section 462.357, Subdivision 6 (2) requires that practical difficulties be demonstrated in order for a variance to be granted. The difficulties must be unique to the property as variances run with the land and not the land owner. Personal and economic situations are not considered valid practical difficulties. In order for an application to be heard by the Planning Commission and City Council practical difficulties having merit must be demonstrated.

HOW DO I PROVE PRACTICAL DIFFICULTY?

The applicant has the burden of proof that the variance is justified. Please address the following points as clearly as possible. The information provided by the applicant will be used in determining whether to approve or deny the request.

- 1) The variance is in harmony with the general purpose and intent of Chapter Two, City Code of Ordinances

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- 2) The variance is consistent with the Comprehensive Plan and will not alter the essential character of the locality

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- 3) State the practical difficulties in complying with the standards contained in Chapter Two, including but not limited to inadequate access to direct sunlight for solar energy systems.

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- 4) State how the applicant proposes to use the property in a reasonable manner not permitted by the standards contained in Chapter Two



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5) The plight of the applicant is due to circumstances unique to the property and not created by the landowner

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6) Address how economic considerations alone do not constitute practical difficulties

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Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

**VARIANCE APPLICATION REQUIREMENTS CHECKLIST  
CITY OF THE VILLAGE OF MINNETONKA BEACH**

<b>Name:</b>			
<b>Address:</b>			
<b>City:</b>			
<b>Phone:</b>			
<b>Email address:</b>			
<b>Signature of all property owners:</b>			
<b>Applicant Signature:</b>		<b>Complete</b>	<b>Incomplete</b>
<b>1. Completed application</b> form, with statement of proposed use and description of project, <u>signed by all property owners and the required fee</u>			
<b>2. List of Property Owners within 350 feet</b> of subject site and mailing labels (see instructions on Land Use Application form)			
Recommended meeting with Planning and Zoning Administrator			
<b>3. Written statement by the applicant which addresses the following required findings:</b> See Attached Practical Difficulties Documentation Form			
<b>The Applicant has addressed the following:</b>			
a. Reduced the impervious surface area of the lot.			
b. Increased setbacks from the lake, if applicable.			
c. Restoration of wetlands, if applicable.			
d. Vegetative buffers adjacent to the Lake and other conservation design actions to protect the water quality of the Lake, if applicable.			
e. Digital pictures of the site showing the overall structure, yards and the area to be varied.			
<b>4. Survey prepared by a Minnesota licensed land surveyor showing the following:</b>			
a. Boundaries, adjoining streets, a legal description of lot, all improvements on the site with existing setbacks, including the Average Minimum Building Setback, and indicates what is to be removed.			
b. Dimensions and setbacks of all proposed improvements.			
c. Surveyors detailed imperious surface calculations			
d. Two-foot contour interval topographic map of the lot with flood plains and flood prone areas, Lake Minnetonka Ordinary High Water Level and Wetlands delineated.			

**VARIANCE APPLICATION REQUIREMENTS CHECKLIST  
CITY OF THE VILLAGE OF MINNETONKA BEACH**

e. Tree survey of the site identifying any deciduous trees over six inches in diameter as measured two feet from the ground and coniferous trees 8 feet or greater in height that are to be removed;			
f. Preliminary grading plan at two-foot contour intervals, lowest floor elevation, bluff and shoreline impact zones, and slopes 12% or greater.			
g. Preliminary landscape plan			
h. Post Construction Requirements: if any, location and type of post construction stormwater runoff control Best Management Practices to be used on the site (per SWPPP).			
i. Scale and North arrow			
j. Is survey signed and dated?			
<b>BUILDING PLANS AS FOLLOWS:</b>			
a. Elevations of all buildings			
b. Preliminary floor plans			
c. Encroachment Plane			
<b>SUBMITTAL REQUIREMENTS AT TIME OF APPLICATION:</b>			
a. One 24 x 36 inch full set of plans the the time of application			
b. AutoCadd 2006 compatible set of plans and PDF set of plans on flash drive or disk			
<b>SUBMITTAL REQUIREMENTS AFTER PLANS HAVE BEEN APPROVED BY PLANNING AND ZONING ADMINISTRATOR:</b>			
a. Revised 15 sets of 11 x 17 inch			
b. One Final 24 x 36 plan set			
c. Revised AutoCadd and PDF plan set			
City Staff will review the initial application submission to determine completeness and will notify the applicant of what, if any, additional information needs to be submitted to make the application complete. Please be aware that supplemental information may also be requested during the evaluation and hearing process.			