



VARIANCE APPLICATION¹

This handout is intended to provide guidance on putting together and submitting a variance application in Montgomery. The purpose of the variance form is to provide the City a chance to review your proposal.

In order to have your variance application be complete and reviewed in the timeliest fashion, there are a number of steps that must be followed:

1. Contact City staff to discuss your variance request and obtain a land use application.
2. Put together an informational packet (described herein) that outlines your request and outlines all reasons as to why the variance should be granted. Initially providing detailed information and answers will greatly reduce the potential overall review time.
3. Submit your completed packet to staff by the applicable **due date** for review. Staff will examine your information to determine if the application is complete, and contact you if additional information is required or was omitted. It is to your advantage to submit your materials as early as possible so staff can assist you in ensuring your application is complete. Applications found to be incomplete as of the due date shall not be reviewed until the following month².
4. Staff will address completed applications by reviewing all information, writing a report regarding the request, and notifying all parties required by law.
5. The Planning and Zoning Commission will review the request at their monthly meeting (typically the 2nd Tuesday of every month) and forward a recommendation – approval, denial or conditional approval onto the Board of Zoning Adjustment and Appeal. Attendance is **required** at this meeting for action. **Nonattendance** may result in denial.
6. The City Council acting as the Board of Zoning Adjustment and Appeal will hold a public hearing regarding your request and will either grant or deny the request. Attendance is **required** at this meeting for action. **Nonattendance** will result in denial.
7. No re-application by a property owner for a variance shall be submitted to the Board of Zoning Adjustment and Appeal within a one (1) year period following a denial of such a request, except the Board may permit a new application if, in the opinion of the Board, new evidence of change or circumstances warrant it.
8. A violation of any condition set forth in granting a variance shall be a violation of this Chapter and automatically terminates the variance and unless the variance is used within **one (1)** year after being issued, it shall become **null and void**.

The City Council has established a **\$300** non-refundable fee for processing a variance application.

¹ The information provided in this document is intended to be a correct statement of the law as set forth in the Montgomery City Code and the laws of the State of Minnesota. However, the applicant should refer to the actual sources and consult with their own legal advisor regarding applicability to their application. In providing this information, the City makes no representations nor provides any legal advice or opinion.

² Minnesota State Statute 15.99 requires local governments to review an application within 10 days of its submission to determine if an application is complete and/or if additional information is needed to adequately review the subject request.

At a minimum, the following materials must be submitted prior to deeming an application complete:

Sub: Req: Item:

___ ___ **1. Land Use Application** signed by all property owners along with payment of the proper filing fee.

___ ___ **2. Variance Application Form**

Description of Proposed Project: _____

Specify the section of the ordinance from which variance is sought: _____

Explain how you wish to vary from the applicable provisions of the ordinance: _____

Current Setbacks:

Front: _____ Side 1: _____
Rear: _____ Side 2: _____

Proposed Setbacks:

Front: _____ Side 1: _____
Rear: _____ Side 2: _____

CRITERIA FOR GRANTING VARIANCES:

In order to aid in the review process, please give a **DETAILED** response to the following ordinance criteria. Your ability to meet the criteria is what the Planning & Zoning Commission/Board of Zoning Adjustments and Appeals requires for their review, so be specific. The applicant for a variance has the burden of proof to show that all of the criteria listed below have been satisfied.

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance? Why or why not?
2. In your opinion, is the variance consistent with the comprehensive plan? Why or why not?
3. In your opinion, does the proposal put property to use in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance? Why or why not?
4. In your opinion, are there circumstances unique to the property not created by the property owner? Why or why not?
5. In your opinion, will the variance maintain the essential character of the neighborhood or locality? Why or why not? Economic considerations alone do not constitute practical difficulties.

Sub: Req: Item:

_____ 3. Fifteen (15) Copies of A boundary survey from a Minnesota licensed land surveyor of the property and a preliminary building and site development plan depicting the property in question. The following list are items required for inclusion on your survey:

Location, Floor Area, and Building Envelope of Existing & Proposed Structures, Lot Lines, Parcel Size in Square Feet, Building Setbacks (Front/Rear/Side): Closest point of building to each property line, Actual elevations for garage floor, basement floor, foundation top and building height, lowest floor elevation if any part of property is in flood plain, All Water Features: Floodplain, Floodway Delineations, Ordinance High Water Mark Elevations, Wetlands, Watercourses Reservoirs, Ponds, & Other Bodies of Water, Existing topographic character of land showing contours at 2' Intervals, Proposed topographic character at 2' intervals, Location of Trees 4" diameter and larger, All adjacent structures within 100 feet of property, All Easements (Road, Utility, Drainage, etc.), Public Right-of-Way Name (street name), Proposed driveway location, Hardcover Calculations - % and Sq Ft of Building Coverage, Driveway and parking, Proposed treatment of the perimeter, including screens, fences, walls and landscaping, & Administrative information – Scale, North Point, PID #, Site Address, Legal Description, Subdivision Name (if applicable), Zoning Classification, and Date of Preparation (THIS REVISION BOX MUST BE CONTINUALLY UPDATED AD CHANGES OCCUR)

_____ 4. Evidence of ownership or enforceable option on the property.

_____ 5. Any other information required by city staff, commissioners, or council members necessary to provide a complete review of the variance request. Information deemed critical to the review process not listed in this handout may be requested. Staff will list other requirements below:

Criteria for granting a Variance Request

In granting a Variance Request, the City Council shall consider the advice and recommendation of the Planning and Zoning Commission and:

1. The variance is in harmony with the general purposes and intent of this Ordinance.
2. The variance is consistent with the comprehensive plan.
3. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance.
4. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant.
5. The variance does not alter the essential character of the neighborhood.
6. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties.

Staff Checklist for Variance

_____ **Completed Application Form**

_____ **Notice of Public Hearing for Newspaper / Affidavit of Publication**

- Published in the legal newspaper at least once, not less than ten (10) days and not more than thirty (30) days prior to said hearing.

_____ **Notice of Public Hearing for Mailing / Affidavit of Mailing**

- Notify by mail all property owners within 350 feet of the outer boundaries of the property in question, not less than ten (10) days and not more than thirty (30) days prior to said hearing

_____ **Staff Report**

_____ **Planning & Zoning Commission Item**

_____ **City Council Action Item / Public Hearing**

_____ **Follow-Up Letter to Applicant**

_____ **Record Variance at Le Sueur County Recorder's Office**