

City of McCall

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VARIANCE (VAR) INFORMATION



A notarized affidavit of mailing and photographic evidence of the posting on the property shall be provided to the administrator at least one week prior to the public hearing.

The following information must be submitted with your completed Land Use Application:

- Site Plan: Accurate site plan, drawn to scale, depicting existing and proposed site conditions
- Fee: \$1,000; check made payable to City of McCall.

Optional: The following may be attached to your completed Land Use Application if their inclusion will provide the Planning and Zoning Commission members with more information regarding the request for variance for the subject property:

- Elevation drawings (drawn to scale) of buildings, signs, or other structures that are part of the request
- Colored photographs of existing buildings on the property

CRITERIA OF APPROVAL RESPONSES

The following questions relate to the criteria of approval for a Variance Application. The Commission must assess compliance with these criteria to act upon the VAR application. To allow the Commission to understand the proposed variance, the applicant shall provide, on a separate sheet, typed responses to the following in their application:

1. Describe the nature of the variance requested.
2. A variance may be granted only upon the finding that literal enforcement of the provision of the Title creates an undue hardship.* The undue hardship relating to the subject property is:

**Economic hardship alone is not to be considered as an undue hardship. The special physical conditions must be unique to the land, structure, or building in question, and not be applicable to other conforming lands, structures or buildings in the vicinity. Special conditions that result from the actions of an owner of the land do not create a hardship.*

3. The unique physical conditions and circumstances of the land, structure or building which constitute the undue hardship are:
4. Explain how the requested variance preserves privileges enjoyed by other property in the vicinity.**

***Nonconforming use of neighboring land, structures, or buildings in the same zoning district or any use of lands, structures or buildings in other zoning districts is not considered a privilege for variance purposes. A variance cannot confer on the applicant any special privileges not permitted for the land, structures or building in the same zoning district and affected by the same conditions and circumstances.*

5. a. Is the variance in conflict with the public interest? **yes/no**
- b. Will the variance alter the neighborhood's essential character? **yes/no**
- c. Will the variance violate the McCall Comprehensive Plan? **yes/no**

Explain your answers, and please be specific:

PROCESS

Purpose: A variance may be granted modifying the requirements of Title 3 and Title 9 respecting: lot width; lot depth; front, side, and rear yard setbacks; lot coverage; parking space; height of buildings; or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size or shape of lots. A variance may not be used to authorize a land use not otherwise allowed in the applicable zone or to increase the density of development beyond that which is authorized in the *Comprehensive Plan*. The Commission may also grant variances to any performance standard, sign, accessory structure, wall or fence.

Procedure:

Preliminary Development Plan Review. Prior to filing a variance application, the applicant shall submit conceptual plans for staff and the Fire Chief to review and discuss the proposed application with the Commission at a work session (not a public hearing).

Neighborhood Meeting. It is required that the applicant organize one, or more, meetings of neighboring groups before submitting plans for a public hearing. The purpose of such meetings is to obtain input to improve plans and reduce negative comment from neighbors.

Upon receipt of the completed application, the Administrator shall affix the date of application acceptance and shall place the application on the agenda for consideration at the next regular meeting of the Commission which is held not less than forty five (45) days after the date of acceptance. The applicant is responsible for the mailing and posting of the public hearing (obtain 'Public Notice Information' for more details or see MCC Title 3, Chapter 15).

Recommendation by Commission: The Commission shall review the request and all agency responses and within forty five (45) days of the meeting, at which the issue was on the agenda, shall make a recommendation to the Council (or Board of County Commissioners if located within the McCall Impact Area) for approval, conditional approval or denial.

Action by Council (or Board):

The Council (or Board) will approve, approve with modifications, or disapprove the application. A notice of the decision will be sent to the applicant. Then the variance is recorded according to § 3.13.026.

Criteria:

Variances shall not be granted on the grounds of convenience or profit, and hardships created by a former or present owner of the property will not justify a variance. In the event that a variance is granted, the restricting zoning regulation(s) shall be varied only to the extent necessary to relieve the applicant of the immediate hardship.

A variance shall not be granted unless the Commission makes specific findings of fact based directly on the particular evidence presented to it which support conclusions that the standards

and conditions have been met by the applicant. The Commission may grant a variance only upon the following findings:

A. Special physical conditions and circumstances applicable to the land, structure or building involved make a literal enforcement of the provisions of this Title an undue hardship; provided that:

1. Economic hardship alone is not to be considered as an undue hardship; and
2. The special conditions and circumstances are peculiar to the land, structure or building involved, and are not applicable to other lands, structures or buildings conforming to Title 3 in the vicinity; and
3. That these special conditions and circumstances do not result from the actions of an owner of the land; provided that for purposes of a variance as to the characteristics of a building, a subdivider who is not the Applicant is not to be considered an owner for these purposes.

B. Granting the variance would preserve for such property privileges enjoyed by other property in the vicinity; provided that:

1. No nonconforming use of neighboring lands, structures or buildings in the same zone, and no use of lands, structures or buildings in other zones, shall be considered a privilege enjoyed by other property in the vicinity; and
2. Granting the variance requested will not confer on the applicant any special privilege that is denied by Title 3 to other lands, structures or buildings in the same zone, and affected by the same conditions and circumstances.

C. Granting the variance would not be in conflict with the public interest and will not alter the essential character of the neighborhood or violate the *Comprehensive Plan*.

Conditions of approval:

Violation of the conditions of approval of a variance is a violation of Title 3 subject to civil and criminal sanctions. The Council may, further, upon the recommendation of the Commission containing findings of fact that the conditions of approval are being chronically violated, revoke a variance or modify the conditions of its approval.

The Commission may require an environmental assessment to be submitted prior to the issuance of any variance permit when there is an operation, material or activity which constitutes a potential threat to public health, safety and welfare or to the quality of the environment.

For more information regarding variances, please refer to the McCall City Code Title 3, Chapter 13.