

## VARIANCE

A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. The Zoning Dictionary, Millennium Edition, 1999

### MGA, PART VIII, PLANNING AND DEVELOPMENT, VARIANCE

**235** (1) A development officer may grant a variance in one or more of the following land-use by-law requirements:

- (a) percentage of land that may be built upon;
- (b) size or other requirements relating to yards;
- (c) lot frontage or lot area, or both, if
  - (i) the lot existed on the effective date of the by-law, or
  - (ii) a variance was granted for the lot at the time of subdivision approval.

(2) Where a municipal planning strategy and land-use by-law so provide, a development officer may grant a variance in one or more of the following land-use by-law requirements:

- (a) number of parking spaces and loading spaces required;
- (b) ground area and height of a structure;
- (c) floor area occupied by a home-based business;
- (d) height and area of a sign.

(3) A variance may not be granted where the

- (a) variance violates the intent of the land-use by-law;
- (b) difficulty experienced is general to properties in the area; or
- (c) difficulty experienced results from an intentional disregard for the requirements of the land-use by-law.

**236** (1) Within seven days after granting a variance, the development officer shall give notice in writing of the variance granted to every assessed owner whose property is within thirty metres of the applicant's property.

(2) The notice shall

- (a) describe the variance granted;
- (b) identify the property where the variance is granted; and
- (c) set out the right to appeal the decision of the development officer.

(3) Where a variance is granted, a property owner served a notice may appeal the decision to the council within fourteen days after receiving the notice.

(4) Where a variance is refused, the applicant may appeal the refusal to council within seven days after receiving notice of the refusal, by giving written notice to the clerk who shall notify the development officer.

(5) Where an applicant appeals the refusal to grant a variance, the clerk or development officer shall give seven days written notice of the hearing to every assessed owner whose property is within thirty metres of the applicant's property.

(6) The notice shall

- (a) describe the variance applied for and the reasons for its refusal;
- (b) identify the property where the variance is applied for; and
- (c) state the date, time and place when council will hear the appeal.

**237** (1) Where a council hears an appeal from the granting or refusal of a variance, the council may make any decision that the development officer could have made.

(2) A development officer shall issue a development permit for any development for which a variance has been granted and which otherwise complies with a land-use by-law if

- (a) the appeal period has elapsed and no appeal has been commenced; or
- (b) all appeals have been abandoned or disposed of or the variance has been affirmed by the council.

(3) A council may by resolution provide that any person applying for a variance shall pay the municipality the cost of

- (a) notifying affected land owners;
- (b) posting a sign.