



CITY OF BLAINE

COMMUNITY DEVELOPMENT SERVICES DEPARTMENT

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Agenda Item Summary

Variance for Required Parking

Meeting Date: January 14, 2021
Staff Contact: Stacy Clauson

Agenda Item Number: 8

SUMMARY:

Community Development Services (CDS) is providing this memo in advance of the January 14th Planning Commission meeting. The memo is in response to an inquiry made at the August 27, 2020 Planning Commission meeting.

BACKGROUND

At the August 27, 2020 meeting, the Planning Commission had a discussion about variances for required parking reductions. The Planning Commission posed a question for staff about whether the Commission could propose a Zoning Code text amendment to tie parking variances to evidence of usage, with required review on an annual or biannual basis.

Staff has conducted a review of this issue and offers the following information for Planning Commission discussion.

Basics of Variances

A variance is a request to deviate from current zoning requirements. If granted, it permits the owner to use the land in a manner not otherwise permitted by the zoning ordinance. It is not a change in the zoning law. Instead, it is a limited change or modification of a specific standard or restriction associated with a particular property. Variances run with the property and are not usually limited to ownership.

A variance is provided in zoning codes to avoid an unfair and unjust application of the zoning ordinance in unique situations. Typically, variances are granted when the property owner can demonstrate that existing zoning regulations present a practical difficulty in making use of the property. As such, a variance should only be available when a unique circumstance of the property results in a practical difficulty or undue hardship. Variances, as such, are essential for legal reasons and reasons of fairness.

Most zoning regulations, by both necessity and practice, employ general language and are uniform in application to an often-diverse collection of properties. A zoning regulation, when strictly applied to a particular property, may have the effect of denying a property owner of reasonable use of property. Without the mechanism of variances, property owners would have no method of seeking relief other than going to the courts.

The Planning Commission is authorized to impose conditions on the issuance of a variance. These conditions may enable the Planning Commission to mitigate or eliminate potential adverse impacts upon adjacent property or the neighborhood caused by the variance. The Planning Commission cannot impose conditions that are not rationally related to minimizing the adverse impacts of granting a variance. The Planning Commission must clearly state any conditions in its decision to grant a variance. The Planning Commission may also impose time conditions. For example, the Commission can grant a limited variance that will lapse if not acted upon within a specified time.

Additional information on variances can be found in the Short Court on Local Planning Resource Manual, available [here](#) (see page 134).

Analysis

Under the provisions established in BMC [17.04.030.B](#), the Planning Commission may initiate an amendment of the Zoning Code by majority vote of its members.

Before taking action on whether to initiate an amendment, there are several potential challenges that should be considered:

1. Lack of certainty and predictability in the decision. If a condition were applied to issuance of a variance that permitted the use to continue operating only based on continual, successful results from usage monitoring, the property owner would have a lack of certainty and predictability on the permitted use of the land. Certainty and predictability are key factors that help to reduce risks associated with long-term investment in land development and buildings.
2. Hardship and Variance. In granting a variance, the decision-maker is required, under the review criteria, to determine that literal interpretation of the zoning code provision proposed to be varied would deprive the applicant of rights commonly enjoyed by other properties in the same district. If this finding is met, it means that sufficient evidence has been provided to demonstrate that a zoning regulation, when strictly applied to a particular property, presents a practical difficulty or undue hardship compared to others subject to the same restriction. If this finding has been met, it would not be appropriate to later modify the decision, based on results from usage monitoring. The hardship flows from the strict application of the ordinance and is peculiar to the property. If these factors continue to exist, the factors supporting the variance approval would still apply.
3. Lack of precedent or examples. Staff also evaluated whether other jurisdictions have similar provisions, and was not able to identify an example.

NEXT STEPS

Options

1. The Planning Commission could initiate an amendment of the Zoning Code by majority vote;
2. The Planning Commission could provide direction for additional research and/or options from CDS, to be brought back to the Planning Commission at a later date; and
3. The Planning Commission could table this issue.