

MISSOULA CITY-COUNTY HEALTH CODE

DATE OF ADOPTION: July 21, 1994
LAST AMENDED DATE: May 20, 2004

VI. VARIANCES.

(A) Purpose. A variance provides limited flexibility from strict compliance with Health Department regulations.

(B) Applicability. When certain conditions or circumstances preclude compliance with requirements of Health Department regulations, a person may apply to the Board for a variance from the applicable regulation.

(C) Scope of variance.

(1) Variances are non-transferable and remain valid only for the applicant to whom they are granted for the period stipulated.

(2) All provisions of Health Department regulations shall apply to variance recipients except those specifically exempted by the Board pursuant to the variance.

(D) Fees. The Board shall establish a fair and reasonable variance application fee based on the cost to give notice of hearing and review and prepare for hearing. The application fee must be paid in full before a variance will be considered. Application fees are non-refundable. The Board may approve changes in fees at regularly scheduled board meetings.

(E) Criteria for variance. The Board may approve a variance only if it finds all of the following:

(1) Special circumstances exist which are:

(a) peculiar to the applicant's property or situation; and

(b) not caused by the applicant's action or inaction; and

(2) Substantial undue hardship would result from requiring strict compliance to the provision or provisions from which the variance is sought by:

(a) creating an unreasonable financial burden on the applicant; and

(b) depriving the applicant of rights commonly enjoyed by other persons similarly situated under the terms of this Code.

(3) Additional criteria are required for a variance from Regulation 1. The Board may approve a variance from-Regulation 1 only if it finds, in addition to all the elements required in section VI (E)(1) and (2) above, the following:

(a) the system that would be allowed by the variance will not cause pollution of state waters in violation of 75-5-605, MCA; and

(b) the granting of the variance will protect the quality and potability of water for public water supplies and domestic uses, and will protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA.

(F) Restrictions on variance. (1) No adverse effect. The Board shall not approve a variance if the applicant's proposal may adversely affect the health, safety, or welfare of any individual or cause adverse environmental effects greater than those effects caused by uses commonly permitted by the Code.

(2) Revisions or modifications made to Health Department regulations shall not be grounds for variance.

(3) Expiration of variance. Unless otherwise specified in Health Department regulations, the privilege to execute a variance expires one year following approval by the Board.

(4) No variance granted pursuant to this section shall be construed to prevent or limit the application of emergency provisions and procedures established in Health Department regulations or relieve applicant of responsibility of complying with other applicable local, state, or federal rules or standards.

(G) Variance procedure. (1) A complete variance application shall be submitted to the Department within 30 days after a permit or proposed action is denied. If the Department does not receive a variance application within the prescribed time, then a variance shall not be granted

(1) Department shall have 10 working days to determine if an applicant has adequately addressed criteria in Section VI (E) (1-3) and VI (H) (1-7).

(2) If the Department determines that an application has not addressed Section VI (E) (1-3) and VI (H) (1-7) adequately, or is otherwise not complete, it shall notify the applicant of the deficiencies.

(4) If the Department determines that an applicant has adequately addressed criteria in Section VI (E) (1-3) and VI (H) (1-7), the Board shall schedule a public hearing within 60 days of the Department's determination.

(5) The Department shall serve notice of hearing to the applicant's last known address by personal service or certified mail at least 14 days before the hearing is scheduled.

The Department shall publish the notice twice, with at least 6 days separating publication.

(6) Notice shall include:

- (a) Name and address of applicant;
- (b) Time, location and nature of hearing;
- (c) Address and phone number where interested persons may obtain further information.

(7) Notice shall be sent by the Department to adjacent property owners using the list of names and addresses supplied by the applicant.

(H) Completed applications. Variance applications shall include:

(1) Applicant's name and address.

(2) Specific provision or provisions of the Code from which a variance is requested.

(3) Legal description or address where variance is requested.

(4) Detailed and accurate description of the proposed project or circumstances under consideration.

(5) Written explanation addressing each criteria under section VI (E)(1) and (2).

(6) A list of the names and address of all adjacent property owners. Failure to provide a complete and accurate list may result in delay or denial of the variance.

(7) Any further relevant information which the Department determines will assist the Board in making its decision and which is reasonably obtainable by the applicant.

(I) Order of hearing. Variance hearings shall proceed in the following order:

(1) First, the Board shall hear the staff report, if any, on the proposed variance.

(2) Second, the applicant shall present relevant evidence to the Board.

(3) Third, the Board shall hear any person in support of or in opposition to the proposed variance and shall accept any related letters, documents, or materials.

(J) Disposition of hearing and continuances.

(1) The Board shall deny, approve, or approve with conditions an application for variance.

(2) The Board shall inform an applicant of its decision in writing, along with reasons for approving or denying the variance and the terms or conditions imposed, within 15 days of its decision.

(3) The Board may continue a hearing for a period not to exceed 45 days.

(4) A hearing may be continued for longer than 45 days only if circumstances require a longer period and both the Board and the applicant agree to a specific period.

(K) Appeals. Any person adversely affected by a variance decision of the Board may initiate judicial review pursuant to the Montana Administrative Procedure Act, except that applicants for variance to the Wastewater Treatment and Disposal System regulation shall first appeal to the Montana Department of Environmental Quality.

(L) Variance Revocation. A variance may be revoked by the Board if information is withheld or inaccurately supplied by the applicant.