

**ORDINANCE**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 18.32 OF THE CITY OF MANITOU SPRINGS MUNICIPAL CODE REGARDING VARIANCES.**

**WHEREAS**, the City desires to clarify the criteria for granting variances from the City's Zoning regulations, not related to use and more closely related to traditionally used criteria;

**WHEREAS**, on April 8, 2015, the Manitou Springs Planning Commission conducted a public hearing for the purpose of discussing and reviewing the proposed amendments to Chapter 18.32;

**WHEREAS**, after reviewing the recommendations of the Planning Department and the information obtained at the public hearing, the Manitou Springs Planning Commission recommended approval of the amendments to Chapter 18.32;

**WHEREAS**, the City Council finds that these amendments to Chapters 18.32 clarify the granting of variance is because of exceptional circumstances unique to a particular property; and

**WHEREAS**, the amendments are in conformity with the City's Comprehensive Plan and are in the best interests of the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:**

**Section 1:** Chapter 18.32 of the City of Manitou Springs Municipal Code is hereby repealed and re-enacted to read in its entirety as follows.

**Chapter 18.32 –VARIANCES**

**18.32.010 Purpose**

The Planning Commission has the authority to vary or modify the application of the requirements of the City's Zoning Code, not related to use so that the spirit of the Zoning Code is observed, public safety and welfare secured, and substantial justice done, when the strict application of this Zoning Code will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding uses.

### **18.32.020 Power to Grant Variances.**

The Planning Commission may authorize variances from the requirements of this Chapter, not related to use. Variances are not available to allow a use that is not permitted in a particular zone district. A variance shall be considered an extraordinary remedy and the conditions set forth below are intended as limitations on the Planning Commission's power to authorize variances.

### **18.32.030 Granting of a Variance.**

- A. No variance shall be authorized unless the Planning Commission finds that all of the following criteria have been met. The endorsement of the variance by adjacent landowners does not relieve the applicant of the burden of meeting all of the requirements set forth in this Section.
1. The applicant would suffer hardship as a result of the application the Code, which hardship is not generally applicable to other lands or structures in the same zone district because of the unusual configuration of the applicant's property boundaries, unique circumstances related to the location of existing structures thereon, or the existence of exceptional topographic conditions thereon.
  2. There are no design alternatives or alternative locations for structures that would eliminate the need for the requested variance or would reduce the amount of the variance required. The variance is the minimum variance that will make possible the reasonable use of the land or structure.
  3. The enforcement of the provisions of the Code deprives the applicant of rights enjoyed by a majority of the other properties in the same zone district.
  4. The need for the variance does not result from the actions of the applicant or his or her agent, a violation of any provision of this Code or a previously granted variance.
  5. Reasonable protections are afforded adjacent properties.
  6. The requested variance will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property.
  7. The granting of the variance will:
    - a. Observe the spirit of the Code;
    - b. Secure the public safety and welfare; and
    - c. Ensure that substantial justice is done.

- B. The existence of nonconforming structures shall not be considered grounds for the issuance of a variance.
- C. Every variance shall run with the land.
- D. Failure to obtain a Building Permit.

Failure to obtain a Building Permit for the construction of a structure for which the variance was granted prior to the expiration of one year from the date of approval of the variance will cause the variance to expire. Requests for an extension of said period shall be presented to the Planning Director in writing at least thirty (30) days prior to the scheduled expiration date. The Planning Director may authorize up to one (1) additional year if cause exists for the extension and there would be no harm to the adjacent property owners or the community in general arising from the extension.

#### **18.32.040 - Application for variance.**

No matter shall be set for a hearing concerning a variance before the Planning Commission until the applicant:

- A. Attended a pre-application meeting with the Planning Director or his/her designee.
- B. Submitted the required number of copies of the application on the City-provided form to the Planning Department.
- C. Paid the application fee in an amount determined from time to time by resolution of the City Council as set forth in Appendix A to this Code and signed a reimbursement agreement as set forth in Section 18.05.050.
- D. Submitted an application, including an explanation of the application consisting of the following:
  - 1. Identification of the variance being requested, a citation of the portion of the Municipal Code from which relief is requested and an explanation of how the variance request meets the criteria in this Chapter;
  - 2. Reasons for filing a request for variance;
  - 3. The explanation shall also address how the variance, if granted, will not be detrimental to the public good, create a conflict with the Comprehensive Plan or impair the intent and purpose of this Code.
- E. A site map indicating existing structures and the proposed variance. The map shall typically consist of a scale drawing depicting the property affected by the variance request, including, but not limited to information that will assist the

Planning Commission in understanding the request. Additional mapping needs will be discussed in the pre-application meeting.

- F. Evidence of mailed notification as specified in public notice requirements Section 18.44.020(C).
- G. Any other information pertinent to the application which addresses issues raised during the review process, or which is deemed necessary by the applicant or City Staff. Additional information may include detailed technical studies/data are needed due to the scale, location or impact of the proposed development.

### **18.32.050 - Public notice.**

Public notice, as specified in Section 18.44.020(B) and (C), shall be provided for all Variance applications.

### **18.32.60 Public Hearing and Action on the Variance Request**

- A. The applicant has the burden of proof to establish the application meets the criteria set forth in this Chapter.
- B. The Planning Commission may impose any reasonable conditions on the issuance of a variance and may amend the variance from that requested. Such conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property with the use of the property as contemplated by the requested variance.
- C. No single decision of the Planning Commission sets a precedent. The decision of the Planning Commission shall be made on the particular facts of each case.
- D. All hearings before the Planning Commission shall be open to the public.
- E. At the public hearing, the applicant and members of the public may appear and present such evidence and testimony as they may desire. The Planning Commission may take notice of, and may consider, any relevant facts within the personal knowledge of any member of the Planning Commission which are stated on the record.
- F. The Planning Commission shall cause a record of its proceedings to be prepared, which shall include all documents and physical evidence considered in each case, together with minutes of the proceedings. Minutes or a written findings and order shall state the grounds for each decision, and shall indicate by name the maker and second of each motion and the vote on each motion. The record of proceedings shall be filed in the office of the Planning Department.

- G. For requests for variances, the Planning Commission shall make specific findings on the factors set forth in subsection 18.32.030 above.
- H. The concurring vote of 5 members of the Planning Commission shall be necessary to approve any variance request.

**18.32.070 - Issuance of permit.**

Where a variance is required, a building permit may not be issued until the variance is approved by the Planning Commission and shall be issued subject to the conditions imposed by the Planning Commission on the variance.

**18.32.80 Appeals**

- A. Any appeal of the decision of the Planning Commission may be made to the City Council. Such appeal must be made in writing within ten (10) days of the date of the final action taken by the Planning Commission and shall following the procedure in 18.44.040.

**18.32.90 Violation and Enforcement**

Violation of an approved variance and its conditions shall be deemed a violation of this Chapter and shall be punishable as provided in Section 1.16.010 of the Code.

**Section 2:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 3:** The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

**Section 4:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 5:** This ordinance shall take effect five (5) days after final approval on second

reading and publication.

Passed on first reading and Ordered Published this 2nd day of June, 2015.

/s/Donna Kast  
City Clerk

A Public Hearing on this ordinance will be held at the June 16, 2015 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: June 4, 2015 (in full)  
*City's Official Website and in City Hall*

Passed on Second Reading and Ordered Published this 16th day of June, 2015.

Approved: /s/ Marc A. Snyder  
Mayor and City Council

Attest: /s/ Donna Kast  
City Clerk

Ordinance Published: June 18, 2015 (in full)  
*City's Official Website and City Hall*