Hi everyone,
I’ve got several items here so am including it in one file.

1) Response from MRSC.org regarding site visits for variance hearings.
2) Clarkston’s variance application
3) Clarkston’s guidance for applying for a variance
4) Asotin’s variance application

1) The first is a response from MRSC.org to questions about site visits for variance hearings. If you are not familiar with MRSC, it is, The Municipal Research and Services Center (MRSC), a nonprofit organization that helps local governments across Washington State better serve their citizens by providing legal and policy guidance on any topic.

Answering the question about visiting a site that is requesting a variance (from Jill Dvorkin, Legal Consultant):

“There is nothing that prevents a Planning Commission from conducting a site visit related to a land use matter. One thing to consider is whether the Open Public Meetings Act (OPMA) (Chapter 42.30 RCW) might apply to the site visit—in which case the site visit should be noticed as a special meeting pursuant to RCW 42.30.080. A site visit by the Planning Commission would be considered a special meeting if (1) a majority (or quorum) of the Planning Commission plans to be present, and (2) they are considering a legislative/policy matter rather than quasi-judicial matter. A legislative matter would be if the Planning Commission were considering a recommendation regarding the adoption or amendment of development regulations or a comprehensive plan as related to the site. If, however, the Planning Commission is wanting to conduct a site visit related to a pending development permit application, an appeal of a land use decision, or site-specific rezone, then this would be considered a quasi-judicial matter that is not subject to the OPMA. RCW 42.30.140(2) specifically provides that the OPMA does not apply to:

That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group

If it does relate to a quasi-judicial matter, the site visit should be noted in the record. Also, if a quorum of the Planning Commission was to visit the site and get a briefing by staff at the site regarding a project, probably project applicants and parties involved in the process should be notified and given an opportunity to be present at the site.”

2) Clarkston’s variance application:
CITY OF CLARKSTON
APPLICATION FOR VARIANCE

Applicant Name: _______________________________________ Home Phone: ________________
Address: ______________________________________________ Work Phone: ________________
Property Owner Name (if different) ____________________________________________________
Address: __________________________________________________________________________
Property Location: __________________________________________________________________
Legal Description of Property: _________________________________________________________
Current Zone: ______________________________________________________________________
Current Use of Property: ______________________________________________________________
Variance being Requested: _____________________________________________________________
___________________________________________________________________________________
___________________________________________________________________________________
PLAN: A site plan, drawn to scale, which shows the property that is under consideration, location of all
improvements and specific information concerning the requested variance. (Attach a separate sheet or use back
of application)

NARRATIVE: A variance may be granted when all the following circumstances exist. Attach a statement
describing how the requested variance conforms with these criteria.

1. Conditions apply to the property that do not apply generally to other properties in the same zone or
vicinity, which conditions are a result of lot size or shape, topography, or other circumstances over which the
applicant has no control;

2. The variance is necessary for the preservation of a property right of the applicant substantially the
same as is possessed by owners of other property in the same zone or vicinity;

3. The authorization of the variance will not be materially detrimental to the purposes of this title, be
injurious to property in the zone or vicinity in which the property is located, or otherwise conflict with the
objectives of city development plans or policies;

4. The variance requested is the minimum variance which will alleviate the hardship;

5. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses
of other properties in the zone;

6. The special conditions requiring a variance do not result from the actions of the applicant.

The Applicant will be notified in writing within 28 days of receipt of the application whether the application is deemed to be
complete. The date of the public hearing will be established upon the acceptance of a complete application.

The Applicant does hereby certify that all of the above statements and information in any attachments transmitted herewith
are true under penalty of perjury by the Laws of the State of Washington.

Signature (Applicant)____________________________________________ Date:_____________
Signature (Landowner)____________________________________________ Date: _____________
****************************************************************************************
FOR OFFICE USE ONLY
Case No: _______________ Date Rec’d: _______________ Rec’d By: _______________________
Hearing Date: _______________ Action Taken: ________________________________________
3) Guidance for requesting a variance from City of Clarkston
GUIDELINES FOR APPLICATION FOR A VARIANCE

CITY OF CLARKSTON HEARING EXAMINER
GARY PETERSON
JULY, 2002

The rules make it hard to get a variance. The hearing examiner will apply the rules. In order to grant a variance, the hearing examiner must find that all six circumstances of Clarkston Municipal Code Section 17.08.020 exist:

(1) **Conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are the result of lot size or shape, topography, or other circumstances over which the applicant has no control;**

Your property has to be different than the neighbors’ properties. Perhaps you are at the foot of a cliff, or next to the state highway or the river. Perhaps your property is an odd shape or very steep or has particular flooding problems. It must be more difficult for you to follow the code than it is for your neighbors because of this difference in your property. As with all these circumstances, you must explain this in your variance application, and to the hearing examiner at the hearing. Conditions that apply to the whole neighborhood are not the type of conditions that justify granting a variance.

The fact that you already have a building in the wrong place, or your building is already too close to your property line, is not such a condition. The code is clear that any new construction, including add-ons to existing buildings, has to meet current requirements. CMC § 17.07.010. The fact that your neighbors’ structures do not meet code is not such a condition.

(2) **The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same zone or vicinity:**

Generally, you have a property right to use your property. You must show that you cannot use your property like your neighbors can use theirs’ because of the difference in your property. As above, you have no right to build in violation of the Clarkston Municipal Code, even add-ons to existing buildings. The fact that your neighbors’ buildings violate the code does
not give you a right to violate the code.

(3) The authorization of the variance will not be materially detrimental to the purposes of this title, be injurious to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of city development or policies;

You should understand that among the purposes of the Clarkston Municipal Code are that all new construction should conform to the code, and nonconforming structures should be eliminated over time. CMC §§ 17.01.020, 17.07.005. To satisfy this circumstance, you must first show that granting you a variance will not injure any of your neighbors. Then you must show that all the other five circumstances exist.

(4) The variance requested is the minimum variance which will alleviate the hardship;

You must show that your variance request is the very smallest request that will allow you to use your property. Any larger request cannot be granted.

(5) The variance shall not constitute a grant of special privilege insistent with the limitation upon uses of other properties in the zone;

The variance will not be a special privilege only if circumstances (1), (2), (4) and (6) exist, and if the variance will not injure any of your neighbors.

(6) The special conditions requiring a variance do not result from the actions of the applicant.

You can get a variance only if you did not cause the difference in your property mentioned in (1) above. For example, if the property is too small because you sold off the rest, or too steep because you excavated, then this resulted from your actions, and you cannot get a variance. You must explain any of your actions which might seem to have resulted in the difference in your property.

Before you apply for a variance, you should be convinced that you can show each of these circumstances. Then you must explain why each circumstance exists, both in the application for the variance, and to the hearing examiner at the hearing. Otherwise, the variance will be denied.

GUIDELINES FOR A VARIANCE - 2
072902 Variance Guidelines.gp.wpd
4) City of Asotin variance application
Application for Variance
Ordinance #2000-587
$150.00 Application Fee

Date of Request:____________________

Property Owner Name:______________________________________________________________

Physical Address: ____________________ City________________ State__________ Zip Code_______________

Mailing Address: ____________________ City________________ State__________ Zip Code_______________

Current Zoning: ____________________ Lot #:________________ Subdivision:_____________________________

Legal Description:__________________________________________________________________________

__________________________________________________________________________________________

APPLICANT: Please supply the following:

Variances to a requirement of this ordinance may be granted only if, on the basis of investigation and
evidence is submitted, all six of the below findings are made. Please provide written responses to each of
these:

1. That a strict or literal interpretation and enforcement of the specified requirement would result in a
   practical difficulty or unnecessary hardship;
2. That there are exceptional or extraordinary circumstances or conditions applicable to the property
   involved or to the intended use of the property which do not apply generally to other properties in the
   same area;
3. That the exceptional or extraordinary circumstances or conditions did not result from the applicant’s
   actions;
4. That the granting of the variance will not be detrimental to the properties or improvements in the near
   vicinity;
5. That the granting of the variance would support goals and policies contained within the comprehensive
   plan; and
6. That granting the variance requested will not confer on the applicant any special privilege that is denied
   by the Ordinance to other lands, structures or building in the zone in which the property is located.

The applicant for a variance to the title shall notify by first class mail, postage prepaid, 10 days prior to the
public hearing the owners of record of all property within 300 feet of the site of the application.

The Applicant does hereby certify that all of the above statements and information in any attachments
transmitted herewith are true under penalty of perjury by the Laws of the State of Washington.

Signature (Applicant):_________________________________________ Date:____________________

Signature (Landowner, if different): _______________________________ Date: ________________
FOR OFFICE USE ONLY

Date Rec’d: _______________  Rec’d By: _______________________

Signature (City of Asotin Mayor): ________________________________ Date: ______________

Signature (Consulting Engineer): ________________________________ Date: ______________

Signature (City of Asotin Building Inspector): ______________________ Date: ______________

Signature (City of Asotin Fire Chief): ______________________________ Date: ______________

Signature (City of Asotin Police Chief): ____________________________ Date: ______________

Signature (City of Asotin Public Works): ____________________________ Date: ______________
   Water & Sewer

Signature (Asotin County Health Dept): ____________________________ Date: ______________

Signature (City of Asotin Planning Commission): ____________________ Date: ______________
Planning Commission Meeting Date: _______________________________

Findings at Public Hearing:

Conditions:
(Attach Findings and Conditions of Public Hearing)

Returned to Applicant ________________, 20______

APPEAL: All decisions for denial of a Variance may be appealed to the Asotin City Council.

TIME LIMIT: Authorization of a Variance shall be a void after six (6) months unless substantial construction pursuant thereto has taken place. However, the City Council may extend this period at the request of the applicant.

Please Remit Application Fee of $150.00 to:
City of Asotin
PO Box 517
Asotin WA 99402
18.76.010 Purpose.
18.76.020 Conditions imposed.
18.76.030 Granting criteria.
18.76.040 Application procedure.
18.76.050 Review.
18.76.060 Appeal.
18.76.070 Permit time limit.
18.76.080 Height limit variances.
18.76.010 Purpose.

The purpose of a variance is to provide relief when a strict application of the zoning requirements would impose unusual practical difficulties or unnecessary physical hardships on the applicant, because special conditions or circumstances exist which are peculiar to the site or location of existing structures thereon due to size, shape, topography or other physical conditions peculiar to and inherent in the particular site. No variance shall be granted to allow a change in use, the use of property for a use not authorized by this title nor for economic reasons. (Ord. 84-335 § 15.01, 1984)

18.76.020 Conditions imposed.
Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this section. Guarantees and evidence may be required that such conditions will be and are being complied with. (Ord. 84-335 § 15.02, 1984)

18.76.030 Granting criteria.
Variances to a requirement of this title may be granted only if, on the basis of investigation and evidence submitted, all six expressly written findings are made:

A. That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulty or unnecessary hardship;

B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties in the same area;

C. That the exceptional or extraordinary circumstances or conditions did not result from the applicant’s actions;

D. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the near vicinity;

E. That the granting of the variance would support goals and policies contained within the comprehensive plan; and

F. That granting the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other lands, structures or buildings in the zone in which the property is located. (Ord. 84-335 § 15.03, 1984)

18.76.040 Application procedure.
The applicant for a variance shall present a completed application form and required information to the clerk-treasurer. Every application must include the location of a known survey point for the property. The clerk-treasurer shall review the application for completeness and transmit the application to the building official. The building official shall review the application with reference to the criteria contained in AMC 18.76.030 and any other applicable codes or ordinances. The building official shall transmit the application to the planning commission. (Ord. 03-627 § 5, 2003; Ord. 03-617 § 1, 2003; Ord. 84-335 § 15.04, 1984)
18.76.050 Review.
A. Upon receipt of an application for variance from the building official, the planning commission shall set a date, time and place for a public hearing on the application:

1. Notice of the date, time, place and purpose of the public hearing shall be given by at least one publication in the local newspaper 10 days prior to the hearing.

2. The applicant for a variance to the title shall notify, by mail, the owners of record of all property adjacent to the site of the application by mail at least 10 days prior to the public hearing, postage prepaid.

B. At this public hearing the planning commission shall review the application, take public testimony on the application and issue a decision for denial or acceptance of the application. The decision of the planning commission shall be guided by the criteria described in AMC 18.76.030 and issued as written findings of fact to accompany the decision. If the planning commission finds for the applicant, the building official will be directed to issue a variance. If the planning commission finds against the applicant, the building official returns the application to the applicant. The planning commission in directing the issuance of a permit may append any conditions to the permit which it deems necessary to mitigate any possible impacts created by the proposed variance. (Ord. 00-587 § 1, 2001; Ord. 92-459 § 2, 1992; Ord. 84-335 § 15.05, 1984)

18.76.060 Appeal.
All decisions for approval, denial or appendance of conditions of a variance may be appealed to the city council. A written appeal must be filed with the clerk-treasurer within 15 days of the planning commission decision. If no appeal is filed within the specified time period, the planning commission decision shall be final. A decision by the city council is subject to review by the superior court. (Ord. 02-603 § 1, 2002; Ord. 84-335 § 15.06, 1984)

18.76.070 Permit time limit.
Authorization of a variance shall be void after six months unless substantial construction pursuant thereto has taken place. However, the city council may extend this period at the request of applicant. (Ord. 84-335 § 15.07, 1984)

18.76.080 Height limit variances.
Notwithstanding any of the provisions of this chapter, the planning commission in reviewing a request for a variance for deviation from the 16-foot height limitation for a detached structure from the main or primary use contained in AMC 18.28.080, 18.30.070, 18.32.080, 18.36.080, 18.40.080 and 18.44.050 may, upon the showing of written consent of all adjoining properties within 300 feet, grant a height variance up to an additional one foot, nine inches, without compliance with AMC 18.76.030, Granting criteria. (Ord. 06-696 § 1, 2006)