

## SECTION 30: VARIANCES/APPEALS

### **Subdivision 1: APPEALS AND ADMINISTRATIVE DECISIONS**

Appeals of decisions of the Zoning Administrator will be heard by the City Council provided that the person making the appeal files an application for a hearing within thirty (30) days after the decision to be appealed was delivered to the applicant by the Zoning Administrator. The following procedure will be followed:

1. **Application**. The person making the appeal must apply for a hearing before the City Council on forms provided by the Zoning Administrator.
2. **Notice and Hearing**. The City Council will schedule a hearing on the appeal.
  - A. At least ten (10) days prior to the hearing a notice will be published in the official county newspaper.
  - B. The City Council will make their decision within thirty (30) days of the public hearing or may extend the time for consideration as permitted by state law.
3. **Notice for Floodplain Properties**. If the applicant is requesting a variance from floodplain elevation, the Zoning Administrator should inform the applicant that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance; and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

### **Subdivision 2: VARIANCES**

No variance in the provisions or requirements of this Ordinance shall be authorized by the City Council unless it finds evidence that the following facts and conditions exist:

1. **Unique Circumstances**. That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district. The unique circumstances did not result from the acts of the property owner.
2. **Necessary to Preserve reasonable use of the property**. The property cannot be put to a reasonable use without the variance. That such variance is necessary for the preservation and enjoyment of a substantial

property right similar to that possessed by other properties in the same district and in the same vicinity.

3. **Not merely economic.** The possibility of increased financial return or economic consideration will not in itself be deemed sufficient to warrant a variance if a reasonable use for the property exists under this Ordinance's terms. This means that cost or money savings cannot be the only reason for the variance.
4. **Maintains the Character of the Neighborhood.** The variance will not alter the area's essential character of the neighborhood.
5. **Meets the Spirit of this Ordinance and Comprehensive Plan.** The variance maintains the spirit and intent of this Ordinance and the Comprehensive Plan.

### **Subdivision 3: OTHER CONSIDERATIONS**

1. **Solar Energy Systems.** Undue hardship shall include, but not be limited to, inadequate access to direct sunlight for solar energy systems.
2. **Earth Sheltered Homes.** Variances shall be granted for earth sheltered construction as defined in Minn. Stat. §116J.06, Subd. 2, when in harmony with this Ordinance.
3. **Non-permitted Use.** The City Council may not permit as a variance any use that is not permitted under this Ordinance for property in the zone where the affected person's land is located.
4. **Temporary Use for one family dwelling.** The City Council may permit as a variance the temporary use of a one (1) family dwelling as a two (2) family dwelling.
5. **Variances in Floodplain Districts.** No variance shall have the effect of allowing a Floodplain District a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by state law.
6. **Conditions.** The City Council may impose conditions in granting variances to insure compliance and protect adjacent properties.

### **Subdivision 4: VARIANCE PROCEDURE**

1. **Application Filing Required.** A person applying for a variance must fill out and submit to the Zoning Administrator a Variance Application form, accompanied by the required fee and detailed material fully explaining the

specific variance request. The application must include a site plan showing the following, as applicable:

- A. Site description (legal description).
  - B. A Certificate of Survey.
  - C. Site plan drawn to scale showing the parcel and building dimensions, area and setbacks.
  - D. Location of all existing and proposed buildings and their square footage.
  - E. Curb cuts, driveways, access roads, parking spaces, off-street loading areas, sidewalks, vehicular circulation, and snow storage locations.
  - F. Landscaping and screening plans.
  - G. Waste facilities including enclosure and screening.
  - H. Drainage and grading plan.
  - I. Sanitary sewer and water plan with estimated use per day.
  - J. Soil type.
  - K. Any additional written or graphic information reasonably required by the Zoning Administrator or the Planning Commission.
2. **Application deadline.** The Zoning Administrator must receive completed applications at least seven (7) days prior to the Planning Commission's next scheduled meeting.
3. **Fees.** A fee the City Council shall establish by resolution must accompany the application. An additional fee may be charged for atypical projects, which in the opinion of the Zoning Administrator will require additional staff time and/or City expenditures. In such case, the applicant must reimburse the City for administrative time and professional services and costs incurred by the City.
4. **Public Hearing.** The Zoning Administrator shall set a date for the official public hearing.
- A. **Published Notice.** The City will publish notice of the Public Hearing's time, place and purpose at least once in the City's official newspaper at least ten (10) days before the public hearing.

- B. **Mailed Notice to Property Owners.** The City will also mail notice of the public hearing's time, place and purpose not less than ten (10) days and not more than thirty (30) days before the hearing date to all individual property owners within three hundred fifty (350) feet or nearest ten (10) property owners, which ever is greater, of the parcel included in the request. The Zoning Administrator must attest and make a part of the proceeding's records a copy of the notice and list of the owners and addresses to which the notice was sent. A property owner's failure to receive notice or a defective notice shall not invalidate any proceedings.
5. **Referral to Planning Commission.** After the Zoning Administrator has reviewed the application and the date has been set for the public hearing, the Zoning Administrator shall refer the application to the Planning Commission, together with the Zoning Administrator's review and recommendations regarding the application.
6. **Planning Commission Review.** The Planning Commission shall consider the request at their next regularly scheduled meeting and shall make a recommendation and report to the City Council
- A. The applicant or the applicant's representative(s) must appear before the Planning Commission in order to answer questions concerning the Variance application.
7. **Recommendation by the Planning Commission.** After reviewing the Variance, the Planning Commission will make a written report and recommendation to the City Council.
8. **Decision by City Council.** Upon receiving the Planning Commission's report and recommendation to the City Council as to whether or not a variance should be granted. The City Council, acting as the Board of Adjustment will make the final decisions on all variances.
- A. **Appearance by Applicant.** The applicant or applicant's representative(s) must appear before the City Council in order to answer questions concerning the variance application.
9. **Vote Required.** Approval of any Variance to this Ordinance will require passage by a majority of the votes cast.
10. **Conditions and/or Revisions.** If the City Council grants the Variance, it may impose conditions it considers necessary to protect public health, safety and welfare. The City Council may also revise the variance to ensure that it is the minimum variance required.

11. **Written Findings**. The City Council will issue written findings stating the reasons for its decision and any conditions imposed, and will serve a copy of its decision on the applicant by U.S. mail, within ten (10) days after its decision. In any event, the City Council will make a decision on each Variance application within sixty (60) days after the Zoning Administrator receives the application or will extend the time for consideration under state law.
12. **Recording**. A certified copy of every Variance to abstract or registered property shall be filed with the Stearns County Recorder. The variance shall include the legal description of the property involved.
13. **Resubmission**. No application, which is substantially the same as and application of a denied Variance shall be resubmitted for a period of one (1) year from the date of the denial. The City Council may permit a new application if, in its opinion, new evidence or a change in circumstances warrant reconsideration.

#### **Subdivision 5: LAPSE OF VARIANCE**

If within one (1) year after granting a Variance the work permitted is not started, such variance shall become null and void unless a petition for an extension has been approved by the City Council.