

SECTION 7. ADMINISTRATION - VARIANCES

Subdivision

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7.01 PURPOSE: The purpose of this section is to provide for deviations from the literal provisions of this Ordinance in instances where their strict enforcement would cause undue hardship because of physical circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance.

7.02 GENERAL PROVISIONS AND STANDARDS:

- A. The City Council shall serve as the Board of Adjustment and Appeals.
- B. Conditions governing considerations of both major and minor variance requests:
 - 1. In considering all requests for a variance and in taking subsequent action, the City staff, the Planning Commission and the City Council shall make a finding of fact that the proposed action will not:
 - a. Impair an adequate supply of light and air to adjacent property.
 - b. Unreasonably increase the congestion in the public street.
 - c. Increase the danger of fire or endanger the public safety.
 - d. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this Ordinance.
 - e. Violate the intent and purpose of the Comprehensive Plan.
 - f. Violate any of the terms or conditions of Item 2, below.
 - 2. A variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that:

- a. Undue hardship will result if the variance is denied due to the existence of special conditions and circumstances which are peculiar to the land, structure or building involved:
 - 1) Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness, insufficient area or shape of the property.
 - 2) Undue hardship caused by the special conditions and circumstances may not be solely economic in nature, if a reasonable use of the property exists under the terms of this Ordinance.
 - 3) Special conditions and circumstances causing undue hardship shall not be a result of lot size or building location when the lot qualifies as a buildable parcel.
 - b. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance, or deny the applicant the ability to put the property in question to a reasonable use.
 - c. The special conditions and circumstances causing the undue hardship do not result from the actions of the applicant.
 - d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.
 - e. The request is not a use variance.
 - f. Variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant.
3. Application for a variance shall set forth reasons that the variance is justified in order to make reasonable use of the land, structure or building.
 4. Should the City Council find that the conditions outlined heretofore apply to the proposed lot or parcel, the City Council may grant a variance from the strict application of this Ordinance so as to relieve such difficulties or hardships to the degree considered reasonable, provided such relief may be

granted without impairing the intent of this Ordinance. In the case of major variance, the Planning Commission, based upon a report and recommendation by the City staff, shall have the power to advise and recommend such conditions related to the variance regarding the location, character and other features of the proposed building, structure, or use as it may deem advisable in the interest of the intent and purpose of the Ordinance.

7.03 PROCEDURE: Pursuant to Minnesota Statutes 15.99, an application for a variance shall be approved or denied within sixty (60) days from the date of its official and complete submission unless extended pursuant to Statute or a time waiver is granted by the applicant. If applicable, processing of the application through required state or federal agencies shall extend the review and decision-making period an additional sixty (60) days unless this limitation is waived by the applicant. Additional procedural requirements are as follows:

A. Minor Variances:

1. Purpose: The purpose of this section is to provide for an expeditious method of processing variance requests.
2. Qualifications: Requests qualifying as minor variances must meet one of the following criteria:
 - a. Cases where hardship to existing buildings or platted property are created as a result of public action or change in City regulations (exception: shoreland and wetland regulations).
 - b. Structure or setback deviations which are characteristics of and common to neighboring uses and which do not exceed five (5) feet.
3. Processing:
 - a. Requests for a minor variance shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a fee as established by City Council resolution. Such application shall also be accompanied by fifteen (15) copies of detailed written and graphic materials necessary for the explanation of the request.
 - b. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports when appropriate and provide general assistance in preparing a recommendation on the action to the City

Council.

- c. The City shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure of any applicant to supply all necessary supportive information may be grounds for denial of the request.
- d. The City Council shall review the application and may upon its option conduct a public hearing (no notice or publication required) on the request. The City Council may also make a determination and require that the matter be processed as a major variance.
- e. The applicant or a representative shall appear before the City Council in order to answer questions concerning the proposed variance request.
- f. The City Council shall make findings of fact and shall decide whether to approve or deny a request for variance within forty (40) days after the public hearing on said request or forty (40) days after the date at which the matter was first considered.
- g. A variance of this Ordinance shall be by a majority vote of the entire City Council.
- h. All decisions by the City Council involving a variance request shall be final except that an aggrieved person or persons shall have the right to appeal within thirty (30) days of the decision to the Stearns County District Court.
- i. If a request for variance receives approval of the City Council, the applicant shall record such with the County Registrar of Titles. The applicant, immediately upon recording such, or as soon as reasonably possible, shall furnish the City proof of recording. No building permits for the property in question will be granted until such proof of recording is furnished to the City.

B. Major Variances:

- 1. Classification: All variances which are not classified as “minor” shall be deemed “major” variances.

2. Processing:

- a. Request for variances, as provided within this Ordinance, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a fee as provided for by City Council resolution. Such application shall also be accompanied by fifteen (15) copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of property owners located within one-quarter (1/4) mile of the subject property, obtained from and certified by Stearns County or the City. The request for variance shall be placed on the agenda of the first possible Planning Commission meeting. The request shall be considered as being officially submitted when all the information requirements are complied with.
- b. Upon receipt of said application, the Zoning Administrator shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its finding and recommendations to the City Council. Notice of said hearing shall consist of a legal property description of request, and be published in the official newspaper at least ten (10) days prior to the hearing and written notification of said hearing shall be mailed at least ten (10) days prior to all owners of land within one-quarter (1/4) mile of the boundary of the property in question.
- c. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance.
- d. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the City Council.
- e. The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure of an applicant to supply all necessary supportive information may be grounds for denial of the request.
- f. The applicant or representative thereof shall appear before the

Planning Commission to answer questions concerning the proposed variance.

- g. The Planning Commission shall make findings of fact and recommend approval or denial of the request. The Planning Commission shall reach a decision within sixty (60) days after the first regular meeting at which the variance request was considered by the Commission. The Commission's recommendation and the City staff's report shall be presented to the City Council.
- h. The City Council shall not grant a variance until they have received a report and recommendation from the Planning Commission or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.
- i. Upon receiving the report and recommendation of the Planning Commission, the Zoning Administrator shall place the report and recommendation on the agenda for the next regular City Council meeting. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
- j. The City Council shall review the application and may at its option conduct a public hearing on the request.
- k. The City Council shall make findings of fact and approve or deny a request for variance within sixty (60) days after receipt of the Planning Commission's recommendation.
- l. A variance of this Ordinance shall be by a majority vote of the entire City Council.
- m. All decisions by the City Council involving a variance request shall be final except that an aggrieved person or persons shall have the right to appeal within thirty (30) days of the decision to the Stearns County District Court.
- n. Whenever a variance for an amendment has been considered and denied by the City Council, a similar application and proposal for the variance affecting the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial, unless a decision to reconsider such matter is made by the City Council.

- o. If a request for variance receives approval of the City Council, the applicant shall record such with the County Registrar of Titles. The applicant, immediately upon recording such, or as soon as reasonably possible, shall furnish the City proof of recording. No building permits for the property in question will be granted until such proof of recording is furnished to the City.

7.04 LAPSE OF VARIANCE: If within one (1) year after granting a variance the use as allowed by the variance shall not have been initiated or utilized, then such a variance shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the City Council. Such extension shall be requested in writing and filed with the Zoning Administrator at least thirty (30) days before the expiration of the original variance or appeal. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to complete or use the permitted in the variance or appeal. Such petition shall be presented to the City Council for decision.

7.05 PERFORMANCE SECURITY:

- A. Upon approval of a variance, the City shall be provided, where deemed necessary by the City Council, with an irrevocable letter of credit, cash escrow, certificate of deposit payable to the City Council, or cash deposit prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall guarantee conformance and compliance with the conditions of the variance and City Ordinance provisions.
- B. The security shall be in the amount equal to one hundred fifty (150) percent of the City Engineer's, Building Official's, or City Council's estimated costs of labor and materials for the proposed improvements or development.
- C. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the variance and City regulations has been issued by the Building Official.
- D. Failure to comply with the conditions of the variance or appeal and City regulations shall result in forfeiture of the security.
- E. Whenever a performance guarantee is imposed by the City, the applicant shall be required to enter into a performance agreement with the City. This agreement is to provide authorization to the City to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.

7.06 CERTIFICATION OF TAXES PAID: Prior to approving an application for a variance, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or utility fees due upon the parcel of land to which the variance application relates.