

## § 150.20 VARIANCES AND APPEALS.

(A) *Purpose and board of adjustment creation.* The purpose of this section is to provide for: (1) an appeal process where it is alleged that there is an error in any order, requirement, decision or determination by an administrative officer in the enforcement of this chapter; and (2) variances from the literal provisions of the chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be keeping with the spirit and intent of this chapter. The City Council will hereby be the Board of Adjustment.

(B) Conditions governing consideration of variance requests.

(1) In considering all requests for a variance and in taking subsequent action, the Board of Adjustment 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 other way be contrary to the intent of this chapter.
- (e) Continue or create a substandard sewage treatment system.
- (f) Violate the intent and purpose of the City Comprehensive Plan.
- (g) Allow a use that is prohibited in the zone in question.

(2) A variance from the terms of this chapter shall not be granted unless it can be demonstrated that:

(a) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district:

1. Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness or shape of the property.

2. Special conditions and circumstances may not be exclusively economic in nature.

(b) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.

(c) The special conditions and circumstances 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 chapter to other lands, structures, or buildings in the same district.

(C) *Procedure.*

(1) *Application.* Appeals or requests for variances, as provided within this chapter, shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by:

(a) The City Council Resolution. This fee shall not be refunded.

(b) The detailed written and graphic materials and site map necessary to fully explain the proposed change, development or use.

(c) Reasons that the variance is justified in order to make reasonable use of the land, structure or building, and that the variance is the minimum variance.

(2) *Staff review/technical assistance reports.* Upon receipt of an application for appeal or variance, the Zoning Administrator shall, when deemed necessary, refer the request to appropriate staff to ensure that informational requirements are complied with. When all informational requirements have been complied with, the request shall be considered officially submitted. Also, when deemed necessary, the Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports and/or provide general assistance in preparing a recommendation.

(3) *Public hearing.* Upon official submission of the request, the Zoning Administrator shall set a public hearing on the request for the next Board of Adjustment meeting and have the hearing published in the official newspaper. The notice shall contain a legal property description and description of the request, and shall be published no less than ten days prior to the hearing. Written notification of the hearing shall also be mailed to least ten days prior to the date of the hearing to all owners of land within 350 feet of the boundary of the property in question and to the Minnesota Department of Natural Resources if in Shoreland. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth in this chapter provided a bona fide effort by the city has been made and documented.

(4) *Board of Adjustment action.* The Board of Adjustment shall conduct the public hearing at which time the applicant or a representative thereof shall appear to answer questions concerning the proposed request.

(a) The Board of Adjustment shall consider possible adverse affects of the appeal or variance. In the case of a variance request, the Board of Adjustment judgment shall be based upon (but not limited to) the conditions set forth in division (B) above.

(b) The Board of Adjustment and City Staff shall have the authority to request any additional information from the applicant deemed necessary to establish conditions pertaining to the request.

(c) The Board of Adjustment shall make a finding of fact, and decide by majority vote of the full Board, such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of the chapter. Such decision shall be in writing and accompanied by any report and recommendation of the city staff and filed with the city and also sent to the applicant, and the Minnesota Department of Natural Resources if in Shoreland within ten days.

(d) Whenever an application for a variance has been considered and denied, a similar application for the variance affecting substantially the same property shall not be considered again for at least six months from the date of its denial; and a subsequent application affecting substantially the

same property shall likewise not be considered again for an additional six months from the date of the second denial unless a decision to reconsider such matter is made by not less than four-fifths vote of the full City Council.

(e) Granted variances shall be filed with the County Recorder.

(f) The applicant shall have the right to appeal within 30 days of receipt of the decision to the District Court.

(D) *Lapse of variance or appeal.* Whenever within one year after granting a variance or appeal, the use as permitted by the variance or appeal shall not have been completed or utilized, then such variance or appeal shall become null and void unless a petition for extension of time in which to complete or to utilize the use has been granted by the City Council. The extension shall be requested in writing and filed with the Zoning Administrator at least 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 utilize the use permitted in the variance or appeal. Such petition shall be presented to the City Council for decision.

(E) *Property survey.* In those cases where a stipulated requirement of this chapter has been modified through the granting of a variance or appeal, a property survey prepared by a registered land surveyor shall be submitted, outlining lot dimensions, setbacks, and buildings. The survey shall be a condition of the variance or appeal and shall be submitted prior to the initiation of any improvement on the property in question.  
(Ord. passed 6-3-1997)