

Section 12: Variance

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12.01 Purpose. The purpose of this Section is to provide for Variances from the literal provisions of this Ordinance 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 in keeping with the spirit and intent of this Ordinance.

12.02 Initiation of Proceedings. Pursuant to Minnesota Statutes Section 15.99, as may be amended, an application for a variance shall be approved or denied within 60 days from the date of its official and complete submittal unless extended pursuant to Statute or a time waiver is granted in writing by the applicant. Additional City requirements are as follows:

12.03 Review Criteria. Conditions governing consideration of Variance requests:

Subd. 1. In considering all requests for a variance and in taking subsequent action, the City staff, the Planning Commission, and the Council acting as the Board of Appeals and Adjustments shall make a finding of fact that the proposed action will not:

- i. Impair an adequate supply of light and air to adjacent property.
- ii. Unreasonably increase the congestion in the public street.
- iii. Increase the danger of fire or endanger the public safety.
- iv. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this Ordinance.
- v. Violate the intent and purpose of the Comprehensive Plan.

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- Subd. 2.** A Variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that undue hardship, as distinguished from a mere inconvenience, 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.
- Subd. 3.** Criteria.
- A. 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.
 - B. 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.
 - C. Special conditions and circumstances as a result of lot size or building location shall not constitute undue hardship if the lot qualifies as a buildable parcel.
 - D. The purpose of the Variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land.
 - E. The Variance does not involve a use which is not allowed within the respective Zoning District.
 - F. The hardship was not created by the applicant.

12.04 Procedures.

- Subd. 1.** Processing.
- a. Requests for a Variance or appeal shall be filed with the Zoning Administrator on an official application form. Such application shall be accompanied by a fee as established by Council resolution. Such application shall also be accompanied by 12 copies of detailed written and graphic materials necessary for the explanation of the request.
 - b. Upon official submission of the request, the Zoning Administrator shall set a public hearing on the request for the next regularly scheduled Planning Commission meeting occurring at least 21 days from such date. The Zoning Administrator shall also cause notice of the public hearing

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containing a description of the property and description of the request, to be published no more than 30 days and no less than 10 days prior to the hearing. Written notification of the hearing shall also be mailed at least 10 working days prior to the date of the hearing to all owners of land within 350 feet of the boundary of the property in question for Conditional Use Permits and 350 feet for amendments. Failure of a property owner to receive said notice shall not invalidate any such proceeding as set forth within this Ordinance provided a bona fide attempt to comply with this provision has been made.

- c. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports, where appropriate, and to provide general assistance in preparing a recommendation on the action to the Council.
- d. 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.
- e. The applicant, or representative thereof, shall appear before the Planning Commission to answer questions concerning the proposed Variance.
- f. The Planning Commission shall make findings of fact and recommend approval or denial of the request.

Provided that the time to act on the request has been extended pursuant to statute, the Planning Commission shall within 60 days after the public hearing, transmit its recommendation to the City Council for its official action.

- g. The Council shall make finding of fact and approve or deny a request for Variance within the time allowed by law.
- h. A Variance shall be approved by simple majority vote of the Council.
- i. Any person or persons aggrieved by any decision of the City Council shall have the right to seek review of the decision

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with a court of record in the manner provided by the laws of the State of Minnesota, and particularly Minnesota Statutes, Chapter 462, as may be amended.

- Subd. 2.** No application for a Variance by a property owner shall be submitted to the Board of Zoning Appeals within a 6 month period following a denial of such a request, except the Board of Zoning Appeals may permit a new application if, in the opinion of the Board of Zoning Appeals, new evidence of change or circumstance is warranted.

12.05 Application Submittal Requirements.

- Subd. 1.** General Information Requirements. The information required for all Variance applications shall include:
- i. Completed application form signed by the fee owner of the subject site including a complete legal description of the property.
 - ii. Written narrative and graphic materials fully explaining the proposed development and rationale for the Variance request.
 - iii. Certificate of survey showing the subject site, existing and proposed structures, setbacks from property lines, the ordinary high watermark of lakes and rivers, lot area, impervious surface coverage, easements, and grade elevations (existing and proposed.)
 - iv. A copy of proposed building plans including elevation drawings for all exterior sides of the proposed structure.
 - v. Payment of application fee(s) (and escrow(s)) as set forth by City Council resolution.
 - vi. The applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the Variance application relates.
 - vii. The City may require that the existing and proposed lot corners be staked at the site in such a manner that they are visible from the road for review by the City.

12.06 Lapse of Variance. If within 1 year after granting a Variance the use as permitted by the Variance shall not have been completed or utilized, then such a Variance shall become null and void unless a petition for an extension of time in which to

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complete or utilize the use has been granted by the Council. Such 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 use the Variance. Such petition shall be presented to the Council for decision.

12.07 Revocation. The Planning Commission may recommend, and the City Council may direct, the revocation of any Variance for cause upon determination that the authorized Variance is not in conformance with the conditions of the approval or is in violation of this Ordinance, City Codes, or other applicable regulations. The City Council or Planning Commission shall initiate an application and the Zoning Administrator shall notify the responsible person that they have an opportunity to show cause why the permit should not be revoked. The application shall be processed and considered pursuant to the procedure set forth for processing Variances by this Section. The Zoning Administrator shall provide the applicant a copy of the proceedings and findings of the Planning Commission and City Council.

12.08 Filing Variance With Wright County.

Subd. 1. Filing Requirement. A certified copy of all Variance resolutions shall be filed with the office of the Wright County Recorder pursuant to Minnesota Statutes. The applicant shall have the responsibility of filing the resolution with Wright County and paying all costs for such recording. A copy of the recorded variance resolution or other documentation from Wright County listing the document number, recording date and appropriate signatures, shall be delivered to the Zoning Administrator as evidence of satisfying this requirement. A building permit for the subject construction shall not be issued until proof of recording has been provided to the City Administrator.

12.09 Inspection. The City hereby reserves the right upon issuing any Variance approval to inspect the premises to ensure compliance with the provisions of this Ordinance or any conditions additionally imposed.

12.10 Financial Guarantee or Surety.

Subd. 1. Where deemed necessary by the City, upon approval of a Variance, the City shall be provided, with a surety bond, cash escrow, letter of credit, certificate of deposit, securities, or cash deposit prior to the issuance of building permits or initiation of work on the proposed improvements or development. Said security shall guarantee

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conformance and compliance with the conditions of the Variance and this Ordinance.

- Subd. 2.** The security shall be in the amount equal to 125 percent of the City Engineer's or Building Official's estimated costs of labor and materials for the proposed improvements or development. Said project can be handled in stages upon the discretion of the City Engineer and Building Official.
- Subd. 3.** 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 Ordinance provisions has been issued by the Building Official.
- Subd. 4.** Failure to comply with the conditions of the Variance or appeal and Ordinance provisions shall result in forfeiture of the security.
- Subd. 5.** Whenever a financial 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.