

**SECTION 1004 – ADMINISTRATION VARIANCES** *(Amended 4/28/20)*

**1004.01**        **PURPOSE.** The purpose of this Section is to provide for the issuance of variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property in instances where their strict enforcement would cause practical difficulties.

**1004.02**        **GENERAL PROVISIONS AND STANDARDS.**

Subd. 1.        Board. The City Council shall serve as the Board of Adjustment and Appeals.

Subd. 2.        Record. All written reports and recommendations to the Board of Adjustment and Appeals from the City staff shall be entered in and made part of the permanent written record of the Board’s meeting.

Subd. 3.        Review Criteria. In considering all requests for a variance and in taking subsequent action, 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 Subd. 4., below.

Subd. 4.        Conditions. A variance from the terms of this Ordinance shall not be granted unless it can be demonstrated that:

- a.        They are in harmony with the general purposes and intent of the ordinance.
- b.        They are consistent with the Comprehensive Plan.
- c.        Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties", as used in connection with the granting of a variance, means that
  - (1) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
  - (2) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
  - (3) the variance, if granted, will not alter the essential character of the locality.
- d.        Economic considerations alone do not constitute practical difficulties.

- e. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- f. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes Section 216C.06, subdivision 14, when in harmony with the ordinance.
- g. The Board of Adjustments and Appeals may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.
- h. The Board of Adjustments and Appeals may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling.
- i. The Board of Adjustments and Appeals may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- j. Practical difficulties 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 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, insufficient area or shape of the property.
- k. 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 under the same conditions.

Subd. 5. Justification. 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.

Subd. 6. Approval. Should the 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 practical difficulties to the degree considered reasonable, provided such relief may be granted without impairing the intent of this Ordinance.

**1004.03 PROCEDURES.** Pursuant to Minnesota Statutes 15.99, as may be amended, an application for a variance shall be approved or denied within sixty (60) days from the date of its official and complete submission unless notice of extension is provided by the City 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 City requirements are as follows:

Subd. 1. Variances.

a. Processing.

1. Request for variances, as provided within this Title, shall be filed with the City on an official application form. Such application shall be accompanied by a fee as provided for by City Council ordinance. Such application shall also be accompanied by the following (amended October 4, 2007):

(a) Three (3) to scale copies and three (3) reduced (8-1/2" x 11" or 11" x 17") copies of a certified survey of the property. The survey shall include all information necessary to enforce applicable zoning regulations. Such information may include but is not limited to:

- Scale and north arrow
- Lot address
- Legal description of parcel
- Benchmark description, location, and elevation
- Property iron locations and elevations
- Lot lines and dimensions
- Easements and rights-of-way
- Parcel size in acres and square feet
- Floor area ratio – *existing and proposed*
- Hardcover calculations – *existing and proposed*
- Location of all hardcover – *including decks, sidewalks, porches, pavers, retaining walls, landscape rock*
- All applicable setbacks
- Existing structure elevations – *garage floor, lowest floor, and lowest opening*
- Proposed structure elevations – *foundation block, garage floor, lowest floor, lowest opening*
- Existing & proposed grade elevations at the following locations:
  - Lot corners
  - Side lot lines extended from front and rear building lines
  - Street elevations (centerline, top of curb/edge of roadway) at lot lines and driveway
  - Building corners
  - 15' outside of principle structure
  - Grade changes
  - Retaining walls (top & bottom)
  - Existing and proposed contours generated by field survey – *LiDAR contours are not allowed*
  - Arrows indicating the direction of proposed surface drainage
  - Driveway grade expressed as a percentage
  - Sanitary service location
  - Water service location
  - Nearby well and septic locations
  - Spot elevations at corners of adjacent structures
  - Location of existing utilities
  - Tree location and diameter
  - Designate trees to be removed
  - Proposed landscaping and/or stabilization of disturbed areas

- Ordinary High-Water contour (Lake Minnetonka: 929.4).  
Floodplain boundary contour (Lake Minnetonka: 931.5).  
Wetland boundary and wetland buffers
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(b) A written narrative addressing the following statements:

1. Specify the section of ordinance from which a variance is sought.
2. Explain how you wish to vary from the applicable provision(s) of the ordinance and what makes the request reasonable.
3. Explain how the variance requested is the minimum variance necessary to alleviate the practical difficulty?
4. Explain how the variance is in harmony and consistent with the general purposes and intent of the Comprehensive Plan and the zoning ordinance?
5. Explain how the variance will not adversely affect the health, safety, or general welfare of the neighborhood and the City.
6. Explain how the variance is necessary due to special conditions applying to the structures or land in question that are particular to the property, not caused by the owner, and do not apply generally to other land or structures in the district or vicinity in which the land is located.

(c) Certification 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.

The Request shall be considered as being officially submitted and the application timeline commences when all the information requirements are in compliance.

2. The request for variances shall be placed on the agenda of the first City Council meeting occurring at least thirty (30) days from the date of official submission unless waived by the Zoning Administrator. Upon receipt of a completed application, the Zoning Administrator shall set a public hearing for a regular meeting of the City Council. The City Council shall conduct the hearing. 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 three hundred fifty (350) feet of the boundary of the property in question (public right-of-way shall not be included in the three hundred fifty (350) foot measurement). The City Assessor's records shall be deemed sufficient for determining the location and ownership of said property. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the records of the proceeding.

3. For properties within the Shoreland, Floodway or Flood Fringe Overlay District, the City shall submit to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the Commissioner will receive at least ten (10) day's notice of the hearing.
4. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Ordinance provided a bona fide attempt has been made to comply with the notice requirements of this Section.
5. 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 Council.
6. The City Council 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.
7. The applicant or representative thereof shall appear before the City Council to answer questions concerning the proposed variance.
8. A variance of this Ordinance shall be by a majority vote of the City Council.
9. All decisions by the 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 Hennepin County District Court.
10. A copy of all decisions granting variances for properties in the Shoreland, Floodway, or Flood Fringe District shall be forwarded to the Commissioner of Natural Resources within ten (10) days of such action.
11. Whenever a variance 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 Council for at least one (1) year from the date of its denial, except as follows:
  - a) If the applicant or property owner can clearly demonstrate that the circumstances surrounding the previous variance application have changed significantly.

- b) If the City Council decides to reconsider such matter by a vote of not less than a four-fifths (4/5) vote.
- 12. If a request for a variance receives approval of the City Council, the City shall record such with the Hennepin County Recorder within thirty (30) days of the City Council approval date.

**1004.04 LAPSE OF VARIANCE.**

Subd. 1. Timeline. Unless the City Council specifically approves a different time when action is officially taken on the request, the variance shall become null and void twelve (12) months after the date of approval, unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the variance. The property owner or applicant shall have the right to submit an application for time extension in accordance with this section.

Subd. 2. Application. An application to extend the approval of a variance shall be submitted to the Zoning Administrator not less than thirty (30) days before the expiration of said approval. Such an application shall state the facts of the request, showing a good faith attempt to utilize the permit, and it shall state the additional time being requested to begin the proposed construction. The application shall be heard and decided by the City Council prior to the lapse of approval of the original request.

Subd. 3. Determination. In making its determination on whether an applicant has made a good faith attempt to utilize the variance, the City Council shall consider such factors as the type, design and space of the proposed construction, any applicable restrictions on financing, or special and/or unique circumstances beyond the control of the applicant which have caused the delay.

**1004.05 PERFORMANCE BOND.**

Subd. 1. Bond. Except in the case of non-income producing residential property (excluding relocated structures), upon approval of a variance, the City shall be provided, when deemed necessary by the City Council, with a surety bond, cash escrow, certificate of deposit, securities, or cash deposit prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the conditional use permit and the ordinances of the City.

Subd. 2. Amount. The security shall be in the amount equal to one hundred ten percent (110%) of the City Engineer's or City Building Official's estimated costs of labor and materials for the proposed improvements. Said project can be handled in stages upon the discretion of the City Engineer and City Building Official.

Subd. 3. Term. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the conditional use permit and ordinances of the City has been issued by the City Building Official.

Subd. 4. Forfeiture. Failure to comply with the conditions of the conditional use permit or the ordinances of the City shall result in forfeiture of the security.

Subd. 5. Performance Guarantee. 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.