

## **SECTION 24 VARIANCES/APPEALS**

### **Subdivision 1: BOARD OF ADJUSTMENT**

1. Established. The Board of Adjustment is the City Council.
2. Procedure Rules. The Board of Adjustment's procedural rules are the same as the City Council's rules.
3. Powers. The Board of Adjustment has the power to do the following:
  - A. Interpret this Ordinance.
  - B. Hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official charged with enforcing this ordinance.
  - C. Hear and decide appeals regarding exact zoning district boundaries.
  - D. Hear requests for variances from this Ordinance's literal provisions where their strict enforcement would cause undue Hardship because of circumstances unique to the individual property and to grant such variances when it is demonstrated that the actions will be in keeping with this Ordinance's spirit and intent.

### **Subdivision 2: APPEALS AND ADMINISTRATIVE DECISIONS**

Appeals of decisions of the Zoning Administrator will be heard by the Board of Adjustment 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 Board of Adjustment on forms provided by the Zoning Administrator.
2. Notice and Hearing. The Board of Adjustment 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 Board of Adjustment will make their decision within thirty (30) days of the public hearing or may extend the time for consideration as permitted by state law.

### **Subdivision 3: VARIANCES**

The Board of Adjustment shall authorize no variance in the provisions or requirements of this Ordinance 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 4: 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 Board of Adjustment 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 Board of Adjustment may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
5. Conditions. The Board of Adjustment may impose conditions in granting variances to insure compliance and protect adjacent properties.

#### **Subdivision 5: VARIANCE PROCEDURE.**

1. Application Filing Required. Prior to the issuance of a permit for any building with a foundation, a site plan for the property must be approved by the City Council after review and recommendation by the Planning Commission. The City Clerk must receive completed applications, including twenty (20) copies 11"x17" and six (6) full size (approx. 22"x34") copies, if applicable, of the site plan/certificate of survey at least ten (10) business days prior to the Planning Commission's next scheduled meeting. The site plan/certificate of survey shall contain at a minimum the following:
  - A. Name, address and phone number of property owner;
  - B. A detailed written narrative describing the scope of the project and details of the application including the current and proposed use of the property;
  - C. Street address of the property;
  - D. Legal description of property (i.e. Lot/Block), including area of parcel in square footage or acreage;
  - E. A current Certificate of Survey of the specified parcel, including monumentation within the tract and to a distance of 50 feet beyond the tract;
  - F. North direction clearly shown;
  - G. Sketch drawn to scale, not more than fifty (50) feet per inch (1"=50'), showing the parcel dimensions, location of all existing and proposed structures, building dimensions, with square footage, area, and setbacks clearly marked;

- H. Curb cuts, driveways, access roads, road centerline and right-of-way, public ways, street names, ingress, egress, and sidewalks clearly marked;
- I. Sidewalks, landscaping features, screening and fences, if any, including distances from lot lines and location and dimensions of required green space, if applicable;
- J. Any proposed entrance or driveway showing the percent of grade and direction of flow from building to street or major artery;
- K. Any existing or proposed easements crossing the property;
- L. Parking spaces, if any, including size and location of handicap spaces, off-street loading areas and vehicular circulation;
- M. Accommodations for snow storage, if applicable;
- N. Location of waste facilities including measure used for enclosure and screening, if required (see Section 5, Subd. 3);
- O. Show all utility poles, services lines, sanitary sewer, storm manholes, water mains, hydrants, catch basins, CATV, gas, telephone and electric lines, aerial and buried, culverts, wells or septic systems existing or proposed for the property;
- P. Lighting locations, types of fixtures and illumination plan, if applicable per Section 5, Subd. 6;

- Q. Location and size of signs, if any, per Section 8;
  - R. Distances to surrounding buildings and surrounding land uses;
  - S. Proposed drainage and grading plan on parcel showing direction of flow from building, elevations and drainage facilities, including storm sewers and ponding, if applicable;
  - T. Sanitary sewer and water plan with estimated use per day of proposed project, if applicable;
  - U. Any additional written or graphic information deemed necessary by the Zoning Administrator, Planning Commission or City Council.
2. Application deadline. The City Clerk must receive completed applications at least ten (10) business 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 City Clerk 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 City Clerk 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 of the parcel included in the request. The City Clerk 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 City Clerk has reviewed the application and the date has been set for the public hearing, the City Clerk shall refer the application to the Planning Commission, together with the City Clerk'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 Board of Adjustment
    - 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 Board of Adjustment.

8. Decision by Board of Adjustment. Upon receiving the Planning Commission's report and recommendation the Board of Adjustment shall hold a public hearing on the matter and the Board of Adjustment will, by resolution, either grant or deny the Variance.
  - A. Appearance by Applicant. The applicant or applicant's representative(s) must appear before the Board of Adjustment 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 Board of Adjustment grants the Variance, it may impose conditions it considers necessary to protect public health, safety and welfare. The Board of Adjustment may also revise the variance to ensure that it is the minimum variance required.
11. Written Findings. The Board of Adjustment will issue written findings stating the reasons for its decision and any conditions imposed, and will serve a copy if its decision on the applicant by U.S. mail, within ten (10) days after its decision. In any event, the Board of Adjustment will make a decision on each Variance application within sixty (60) days after the City Clerk 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 Benton County Recorder. The variance shall include the legal description of the property involved.

13. Resubmission. No application, which is substantially the same as an application of a denied Variance, shall be resubmitted for a period of one (1) year from the date of the denial. The Board of Adjustment may permit a new application if, in its opinion, new evidence or a change in circumstances warrant reconsideration.

#### **Subdivision 6: 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.

#### **Subdivision 7: COSTS OF ENFORCEMENT.**

The applicant shall pay all costs incurred by the City, including, but not limited to, administrative staff time, engineering, legal, planning, and inspection expenses, in connection with the application, including approval and acceptance of the application and review of site plans and documents, recording fees, as well as any other required agreements for the application.

Section 24 Variance/Appeals, Subd. 5 (1-2) Variance Procedure was amended by Ordinance Number 399, adopted August 9, 2011 and published May 22, 2012.

Section 24 Variance/Appeals, Subdivision 7 – Costs of Enforcement, was added by Ordinance Number 414, adopted November 5, 2013, and published November 12, 2013.