

## **DIVISION 8.**

### **VARIANCES**

\* State Law References: Variances, Minn. Stats. 462.357, subd.6

#### **Sec. 117-267. - Purpose.**

The purpose of this division is to provide for deviations from the literal provisions of this chapter in instances where their strict enforcement would cause practical difficulties 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 chapter. (*Zoning Ord., § 8.01*)

#### **Sec. 117-268. - Board of zoning adjustments and appeals.**

The city council shall act as the board of zoning adjustments and appeals. (*Zoning Ord., § 8.02*) **State law reference**— Authority of council to service as board of adjustments and appeals, Minn. Stats. § 462.354, subd. 2.

#### **Sec. 117-269. - Procedures.**

**1.**

Requests for a variance shall be filed with the zoning administrator on an official application form. Such application shall be accompanied by a fee as established by the city. This fee shall not be refunded. The application shall be considered as being officially submitted complete when the applicant has complied with all the specified informational requirements, which shall include the following:

**a.**

A written description of the request for the variance, including an explanation of compliance with the variance criteria set forth in this division.

**b.**

Supporting materials, as outlined in section 117-170, as determined by the zoning administrator as applicable to be necessary for the complete and clear definition and understanding of the request.

**2.**

Upon receipt of a complete application, as determined by staff review, and following preliminary staff analysis of the application and request, the zoning administrator, when appropriate, shall establish a time and place for consideration by the planning commission. At least ten days before the date of the meeting, a written notice of the meeting shall be mailed to the applicant and to all other owners of property located within 350 feet of the boundaries of the property which is the subject of the application.

**a.**

Failure of a property owner to receive notice shall not invalidate any such proceedings as set forth within this chapter.

**b.**

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 planning commission.

**c.**

The planning commission and zoning administrator 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 chapter.

**d.**

The applicant or a representative thereof may appear before the planning commission in order to present and answer questions concerning the proposed request.

**e.**

The planning commission shall make a finding of fact and make a recommendation on such actions or conditions relating to the request as they deem necessary to carry out the purpose of this chapter. Such recommendations shall be in writing. A variance shall not be recommended for approval by the planning commission or granted by the Council unless the planning commission first considers the following standards.

1. The variance is consistent with the adopted Comprehensive Plan.
2. The variance is in harmony with the general purposes and intent of the ordinance.
3. The Applicant 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:
  - a.) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
  - b.) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
  - c.) The variance, if granted, will not alter the essential character of the locality.

4. Economic considerations alone shall not constitute practical difficulties under the terms of the Ordinance.
5. Practical difficulties shall includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.
6. Variances shall be granted for earth sheltered construction as defined in MN. Stat. 216C.06, Subd. 14 as may be amended, when in harmony with the zoning ordinance.

**f.**

The board shall not act upon the request until they have received a report and recommendation from the planning commission and the city staff or until 60 days after the first regular planning commission meeting at which the request was considered.

**g.**

Upon receiving the report and recommendation of the planning commission, the zoning administrator shall schedule the application for consideration by the board. Such reports and recommendations shall be entered in and made part of the permanent written record of the board meeting.

**h.**

Upon receiving the report and recommendation of the planning commission, the planning commission shall hold a public hearing and shall make a recorded finding of fact and may impose any condition it considered necessary to protect the public health, safety and welfare.

**i.**

If, upon receiving said reports and recommendations of the planning commission, the board finds that specific inconsistencies exist in the review process and thus the final determination of the board will differ from that of the planning commission, the board may, before taking final action, refer the matter back to the planning commission for further consideration. The board shall provide the planning commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.

**j.**

Approval of a request shall require passage by a majority vote of the entire board.

**k.**

In granting any variance under the provisions of this division, the board shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulations or provisions to which the adjustment or variance is granted as to light, air, and the public health, safety, comfort, convenience and general welfare.

**l.**

In all cases where variances are granted under the provisions of this division, the board shall require such evidence and guarantee as it may deem necessary to ensure compliance with the conditions designated in connection therewith.

**m.**

The zoning administrator shall serve a copy of the final order of the board upon the petitioner by mail.

**n.**

Whenever an application for a variance has been considered and denied by the board, a similar application for a variance affecting substantially the same property shall not be considered again by the planning commission or board 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 by the planning commission or board for an additional six months from the date of the second denial unless a decision to reconsider such matter is made by a majority vote of the full board. (*Zoning Ord.*, § 8.04)

**Sec. 117-270. - Expiration.**

Unless the board specifically approves a different time when action is officially taken on the request, approvals which have been issued under the provisions of this division shall expire without further action by the planning commission or the board, unless the applicant commences the authorized use or improvement within one year of the date the variance is issued; or unless before the expiration of the one-year period the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by resolution of the city council. The request for extension shall state facts showing a good faith attempt to complete or utilize the approval permitted in the variance. A request for an extension not exceeding one year shall be subject to the review and approval of the zoning administrator. On matters involving a variance approval, should a second extension of time or any extension of time longer than one year be requested by the applicant, it shall be presented to the planning commission for a recommendation and to the board for a decision. (*Zoning Ord.*, § 8.06)

**Sec. 117-271. - Performance agreement and financial guarantee.**

Following the approval of a variance as required by this division and prior to the issuing of any building permits or the commencing of any work, the applicant shall guarantee to the city, as may be applicable, the completion of all private exterior amenities as shown on the approved site plan and as required by the variance approval. The guarantee shall be made by means of a site improvement performance agreement and a financial guarantee as specified in division 5 of this article. (*Zoning Ord.*, § 8.07)

**Sec. 117-272. - 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 city utility fees due upon the parcel of land to which the variance application relates. (*Zoning Ord.*, § 8.08)

**State law reference—** Authority to so provide, Minn. Stats. § 462.353, subd. 5.

**Secs. 117-273—117-292. - Reserved.**