

SECTION 1014 – VARIANCE

SECTION

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1014.01: PURPOSE: The purpose of this Section is to provide relief from the strict application of the terms of this Ordinance, 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 to be in keeping with the spirit and intent of this Ordinance.

1014.02: INITIATION OF PROCEEDINGS: Pursuant to Minnesota Statutes 15.99 as amended, an application for a variance shall be approved or denied within sixty (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:

1014.03: PROCEDURE: The process for filing a variance application is outlined below:

Subd. 1. Process.

1. Prior to filing an application for variance, the prospective applicant(s) shall schedule a preliminary meeting with the Zoning Administrator or designee to discuss items including, but not limited to the nature of the proposed use, consistency of the proposal with applicable City policies and standards, and information required for a formal application.
2. The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a non-refundable filing fee and escrow as established by City Council resolution. Within fifteen (15) business days of application submittal, the City Administrator or designee will issue a letter identifying any incomplete items required to process the application. The request shall be considered as being officially submitted when the Zoning

Administrator deems the application to be complete and the applicable fees and escrows have been paid. The formal review will not commence until such a time, as the application is complete. (Ord. 2003-12, 9/10/03).

3. Following receipt of a complete application, as determined by staff review, the Zoning Administrator or designee will submit copies of the proposal to the appropriate City staff, consultants and all affected jurisdictions responsible for review of the amendment.
 - a. The Commissioner of the Department of Natural Resources shall be notified in writing and said notice shall be postmarked at least ten (10) days in advance of the public hearing of any request for a Shoreland Management variance pursuant to the requirements of Section 1065 (Shoreland Management District) or variance from Section 1064 (Floodplain Management) of this Chapter. (Ord. 2004-09, 4/14/04).
4. The Zoning Administrator or designee shall set the date for a public hearing and publish the date, time, meeting location, subject site location and brief description of the proposal in the official newspaper at least ten (10) days prior to the public hearing. Written notices shall be mailed at least ten (10) days prior to the public hearing to all owners of land within three hundred fifty (350) feet of the boundary of the property to which the variance application relates.
5. Failure of a property owner to receive said notice(s) shall not invalidate any such proceedings as set forth in this Section.
6. The Planning Commission shall hold the public hearing to consider the application and the possible adverse effects of the proposed variance. An application for variance shall not be approved unless a finding is made that failure to grant the variance will result in practical difficulties for the applicant in complying with the requirements of this Ordinance. "Practical difficulties" means that the applicant proposes to use the property in a reasonable manner not permitted by the Ordinance. In addition, as may be applicable, all of the following criteria must be met:
 - a. That because of the particular physical surroundings, lot shape, narrowness, shallowness, slope or topographical conditions of the specific parcel of land involved, practical difficulties to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
 - b. That the conditions upon which a petition for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

- c. That the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land.
- d. That the alleged practical difficulties are caused by this Ordinance and have not been created by any persons having an interest in the parcel of land and are not self-created difficulties.
- e. That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
- f. That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.
- g. The variance is the minimum action required to eliminate the practical difficulties.
- h. The variance does not involve a use which is not allowed within the respective Zoning District.
- i. The variance is in harmony with the general purposes and intent of the Ordinance.
- j. The variance is consistent with the comprehensive plan.
- k. The property owner proposes to use the property in a reasonable manner not permitted by the Ordinance.
- l. The variance will not alter the essential character of the locality.
- m. Shoreland Management District Variances.
 - (1) Variances may only be granted in accordance with Minnesota Statute Chapter 462, as applicable. A variance may not circumvent the general purposes and intent of Section 1065 (Shoreland Management District) of this Ordinance. No variance may be granted that would allow any use that is not allowed in the underlying zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. In considering a variance request, the Board of Adjustment must also consider whether the property owner has reasonable use of the land

without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

- (2) For existing developments, the application for variance shall clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require re-construction of a nonconforming sewage treatment system.
- n. Floodplain Management Variances. See Section 1064 (Floodplain Management) of this Chapter for requirements and provisions related to Floodplain Districts.
- (1) The Board of Adjustment shall adopt rules for the conduct of business and may exercise all of the powers conferred on such Boards by State Law.
 - (2) Administrative Review. The Board of Adjustment shall hear and decide variances and appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this Chapter.
 - (3) The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of the Floodplain Management regulations of this Chapter as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation which justified the granting of the variance. No variance shall have the effect of allowing in any district uses not allowed in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied.
 - (a) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (b) Variances shall only be issued by a community upon:

- 1) A showing of good and sufficient cause,
 - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Chapters.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. (Ord. 2004-09, 4/14/04).
7. The Planning Commission and City staff shall have the authority to request additional information be provided by 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 on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.
 8. The applicant or a representative of the applicant shall appear before the Planning Commission in order to present the case for the applicant and to answer questions concerning the proposal. Failure of the proponent to appear at either the Planning Commission or City Council consideration of the matter shall constitute grounds for tabling or rejection of the application. The applicant shall be responsible to pay all fees associated with re-notification (including staff time, publication and postage charges) for an application that is tabled due to failure of the applicant to attend the meeting.
 9. The Planning Commission shall make a recommendation to the City Council to approve, deny, or conditionally approve the variance application within sixty (60) days of the receipt of the complete amendment application. The recommendation shall consider the criteria for decision outlined in item 6 of this Subdivision.
 10. Upon receiving the recommendation of the Planning Commission and the City staff, the City Administrator shall schedule the application for consideration by the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
 11. When the City Council receives the recommendation of the Planning Commission on any request for change, or if the Planning Commission has not given the City Council a recommendation within thirty (30) days after submittal of a complete

application (unless an extension has been provided pursuant to Minn. Stat. 15.99), the City Council shall set a time for a public hearing on the request. The notice shall be published and mailed as set forth in this Section.

12. Upon receiving the report and recommendation of the Planning Commission and City Staff, the City Council shall hold a public meeting to act on the application. The City Council may before taking final action, refer the matter back to the Planning Commission for further consideration based upon new information, or the City Council finds that specific inconsistencies exist in the review process. The City Council shall provide the Planning Commission with a written statement detailing the specific reasons for referral. The City Council shall approve, deny or conditionally approve the variance (based upon the applicable criteria for decision outlined in Item 6 of this Subdivision), within sixty (60) days of receipt of the complete application, unless an extension has been provided pursuant to Minn. Stat. 15.99. The City Council may impose conditions on the granting of variances. Any conditions imposed must be directly related to and must bear a rough proportionality to the impact created by the variance.
13. Approval of a variance application shall require passage by a majority vote of the Council members present at the City Council meeting. Said approval shall be in the form of a resolution setting forth the findings of fact and conditions of approval associated with the variance.
 - a. A copy of all final decisions granting a variance under local shoreland management controls shall be sent to the commissioner or the commissioner's designated representative and postmarked within ten (10) days of final action.
 - b. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in paragraph a, above, shall also include the Board of Adjustment's summary of the public record/testimony and the finding of facts and conclusions which supported the issuance of the variance.
 - c. In passing a variance to the Floodplain Management Section of this Chapter, the City Council shall make its decision in writing setting forth the findings of fact and the reasons for its decisions. In granting the variance, the City Council may prescribe appropriate conditions and safeguards such as those specified in Section 1007.03, Subd. 1., Item 6h, (6) e of this Chapter. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Chapter punishable under Section 1064.09. A copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

- d. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that:
 - (1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and
 - (2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program. (Ord. 2004-09, 4/14/04).
- 14. Denial of applications for variance shall be accompanied by written findings of fact of the City Council including supporting data setting forth the reasons for the denial in terms of the ways in which the application fails to meet the applicable difficulties or hardship standard, intent of the Comprehensive Plan and/or this Ordinance or would otherwise injurious to the public health, safety and welfare.
- 15. Whenever an application for a variance has been considered and denied by the City Council, a similar application for variance affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least one (1) year from the date of its denial.

1014.04: APPEAL OF RULING: Any person or persons, any private or public board, or taxpayer of the City aggrieved by any decision of the City Council shall have the right to seek review of the decision with a court of record in the manner provided by the laws of the State of Minnesota, and particularly Minnesota Statutes, Chapter 462, as such statutes may be from time to time amended, supplemented or replaced.

1014.05: APPLICATION SUBMITTAL REQUIREMENTS:

Subd. 1. General Information Requirement. The information required for all variance applications shall include:

- 1. Completed application form signed by the fee owner of the subject site including a complete legal description of the property.
- 2. Written narrative and graphic materials fully explaining the proposed development and rationale for the variance request.

3. Certificate of survey showing the subject site, existing and proposed structures as well as setbacks from property lines and the ordinary high watermark of lakes and rivers, lot area, impervious surface coverage, building coverage, easements, grade elevations (existing and proposed).
4. A copy of proposed building plans including elevation drawings for all exterior sides of the proposed structure.
5. Payment of application fee(s) and escrow(s) as set forth by City Council resolution.
6. 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.
7. The property corners and the location of all proposed buildings shall be staked at the subject site for review by Staff, Planning Commission and City Council Members, prior to the public hearing.

1014.06: 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.

1014.07: EXPIRATION: Unless the City Council specifically approves a different time when action is officially taken on the request, variances which have been issued under the provisions of this Section shall expire without further action by the Planning Commission or the City Council, unless the applicant commences the authorized use within one (1) year of the date the variance is approved; or, unless before the expiration of the one (1) 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 City Council resolution. The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the variance application. A request for an extension not exceeding one (1) year shall be subject to the review and approval of the Zoning Administrator. Should a second extension of time or any extension of time longer than one (1) year be requested by the applicant, it shall be presented to the Planning Commission for a recommendation and to the City Council for a decision.

1014.08: FILING VARIANCE WITH SHERBURNE COUNTY:

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

1014.09: 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.

1014.10: SITE IMPROVEMENT PERFORMANCE AGREEMENT: Upon approval of a variance application the City may require the applicant to enter into a performance agreement prior to issuing of building permits or initiation of work on the proposed improvement or development. Said agreement shall guarantee conformance and compliance with the conditions of the variance approval and the codes of the City. The performance agreement shall be prepared and approved by the City Attorney and shall provide for all of the items specified by Section 1031 (Performance Agreements) of this Ordinance.