

Section 21. Administration--Variances and Appeals

Subd. 1. Board Of Zoning Adjustment

The Planning Commission shall be the Board of Appeals and Adjustments for this City, and as provided my Minn. Stat. Sec. 462.354, subd. 2 shall have the powers granted under Minn. Stat. Sec. 462.357, subd. 6, as they may be amended from time to time. The board shall serve without compensation.

Subd. 2. Pursuant to Minn. Stat. Sec. 462,357, subd. 6, as it may be amended from time to time, the Planning Commission, acting as a Board of Appeals and Adjustments, may issue variances from the provisions of this zoning code, subject to approval of the City Council. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Subd. 3.

- A. Variance shall only be permitted
- (i) when they are in harmony with the general purposes and intent of the ordinance and
 - (ii) when the variances are consistent with the comprehensive plan;
- B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance;

Subd 4. "Practical difficulties," as used in connection with the granting of a variance, means that

- (i) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- (ii) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- (iii) the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

Subd. 5. Variances shall be granted for earth sheltered construction as defined in section 216C, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments 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. The board may permit a variance the

temporary use of a one family dwelling as a two family dwelling. The board may impose conditions in the granting of variances.

Subd. 6. Appeals. Any person, firm, or corporation objecting to the ruling of any official on the administering of the provisions of this ordinance shall have the right to appeal to the board of zoning adjustment. The board of zoning adjustment shall, after receiving the written report and recommendation of the Planning Commission and the City staff, make a finding of fact and made a decision on appeals where it is alleged by the appellant that error has occurred in any order, requirement, decision or determination made by the Building Inspector in the enforcement of this ordinance. However, said appeal shall be filed not later than ninety (90) days after the applicant has received a written notice from the Building Inspector or said appeal shall be considered void.

Subd. 7. Procedures.

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 outlined in Section 22 of this ordinance. This fee shall not be refunded. Such application shall also be accompanied by detailed written and graphic materials necessary for the explanation of the request.

B. Upon receiving said application, the zoning administrator shall refer the application, along with all related information, to the City Planning Commission acting as the board of zoning adjustment for a public hearing.

C. The Planning Commission, acting as the board of zoning adjustment, shall consider the variance or appeal at its next regular meeting, unless the filing date falls within twenty one (21) days of said meeting, in such case the request would be placed on the agenda at the regular meeting following the next regular meeting. The zoning administrator shall refer said request, along with all related information, to the Planning Commission at least ten (10) days prior to the regular meeting.

D. The request shall be referred to the city staff for a report and recommendation to be presented to the Commission. The report and recommendations of the City staff are to be entered in and made a part of the permanent written record of the Planning Commission meeting.

E. The Planning Commission acting as the Board of Adjustment shall reach a decision within sixty (60) days after the first regular meeting at which the variance or appeal request was considered by the Commission.

F. The Planning Commission acting as the board of Zoning adjustment shall hold a hearing on all variance requests. Notice of such hearing shall be mailed not less than 10 days prior to the hearing to all owners of property according to the Becker County assessment record, within seven hundred (700) feet of the property to which the variance relates.

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

H. The City Council, after receiving the board of zoning adjustment's recommendation shall make a finding of fact and shall decide whether to approve or deny a request for a variance or an appeal within thirty (30) days after the public hearing on said request.

I. If, upon receiving said reports and recommendations of the Planning Commission and City staff, the City Council finds that specific inconsistencies exist in the review process and thus the final recommendation of the City Council will differ from that of the Planning Commission, the City Council shall, before taking final action, refer the matter back to the Planning Commission for further consideration. The City Council 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.

Subd. 8. Lapse of Variance or Appeal. Whenever within one (1) year after granting a variance or appeal of work, as permitted by the variance or appeal, shall not have been completed, then such variance or appeal shall become null and void unless a petition for extension of time in which to complete the work has been granted by the Planning Commission. Such extension shall be requested in writing and filed with the zoning administrator at least thirty (30) days before the expiration of the original variance or appeal. There shall be no charge for the filing of such appeal. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance or appeal.

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(Pages 444-455 Reserved for Changes)