

SECTION 6

ADMINISTRATION - VARIANCES

Section

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⁶⁷20-6-1: **PURPOSE:** The purpose of this Section is to provide for deviations from the literal provisions of this Chapter in instances where their strict enforcement would cause practical difficulties because of physical 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 and the Comprehensive Plan.

⁷²20-6-2: **BOARD OF ADJUSTMENT AND APPEALS:** The City Council shall serve as the Board of Adjustment and Appeals.

⁷²20-6-3: **REVIEW CRITERIA:** A variance request (major or minor) shall not be approved unless a finding is made by the City Council that failure to grant the variance will result in practical difficulties.

- A. "Practical difficulties" means that the property owner proposes to use the property in a reasonable manner not permitted by this Chapter and include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- B. The applicant for variance shall also demonstrate that the request satisfies the following criteria:
 - 1. That the variance would be consistent with the Comprehensive Plan.
 - 2. That the variance would be in harmony with the general purposes and intent of this Chapter.
 - 3. That the plight of the landowner is due to circumstances unique to the property not created by the current or any previous landowner.

4. That the purpose of the variance is not exclusively economic consideration.
 5. That the granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.
 6. That the requested variance is the minimum action required to eliminate the practical difficulty.
- C. Variances may not be approved for any use that is not allowed under this Chapter for property in the Zoning District where the land is located.
- D. The Planning Commission, in the case of a major variance, and based upon a report and recommendation by the City staff, shall have the power to advise and recommend such conditions related to the variance regarding the location, structure, or use as it may deem advisable in the interest of the intent and purpose of this Chapter.
- E. The City Council shall in granting any variance under the provisions of this Section designate any conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulations or provisions to which the variance is granted, as to light, air, and the public health, safety, comfort, convenience and general welfare.

⁷²20-6-4: **PROCEDURES:**

A. Minor Variances:

1. Purpose. The purpose of this Section is to provide for an expeditious method of processing variance requests.
2. Qualifications. Requests qualifying as minor variances must meet one of the following criteria:
 - a. Cases where practical difficulties to existing buildings or platted property are created as a result of public action or change in City Code standards other than those amendments affecting floodplain, shoreland, wetland, and/or wild and scenic river regulations.
 - b. Structure or setback deviations which are characteristic of and common to neighboring uses and which do not exceed five (5) feet or more than a ten (10) percent departure from a standard established by this Chapter.

B. Major Variances:

1. Classification. All variances which are not classified as "minor" shall be deemed "major" variances.

C. Processing. A Request for a minor or major variance shall be filed with the City on an official application form and processed in accordance with this Section and Minnesota Statutes 15.99.

1. An application shall be accompanied by a fee as provided for by Section 2-4-2 of the City Code.
 - a. Such application shall also be accompanied by detailed written and graphic materials fully explaining the proposed change, development, or use including the information required by Section 20-9-6 of this Chapter.
 - b. The request shall be considered as being officially submitted when the Zoning Administrator determines that all the information requirements are complied with.
 - c. The City Council, the Planning Commission, and the City staff shall have the authority to request additional information from the applicant or to retain expert testimony at the expense of the applicant and said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.
 - d. Failure on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.
2. Proof of Ownership or Authorization: The applicant shall supply proof of title and the legal description of the property for which the variance is requested, consisting of an abstract of title or registered property abstract currently certified together with any unrecorded documents whereby the petitioners acquire a legal ownership or equitable ownership interest and as applicable supply documented authorization from the owner(s) of the property in question to proceed with the requested interim use permit.
3. Upon receipt of said application for a major variance, the City Clerk shall set a public hearing to be conducted by the Planning Commission following proper hearing notification as applicable.
 - a. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least ten (10) days prior to the hearing.

- b. Written notification of said hearing shall be mailed to surrounding area property owners within three hundred fifty (350) feet of the property in question at least ten (10) days prior to the hearing.
 - c. 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.
 - d. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section.
4. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where applicable, and provide general assistance in preparing a recommendation on the action to the Planning Commission and City Council.
5. The applicant or a designated representative thereof shall appear before the Planning Commission and City Council in order to answer questions concerning the proposed request. Failure by the applicant to attend meetings at which the application is to be considered by the Planning Commission or City Council may be grounds for denial of the request.
6. The Planning Commission shall make a finding of fact and recommend such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of the Chapter.
7. The City Council shall not consider or act upon an variance until they have received a report and recommendation from the Planning Commission or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.
8. Upon completion of the report and recommendation of the Planning Commission, the request shall be scheduled for consideration on the agenda of the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.
9. Upon receiving the report and recommendation of the Planning Commission and City staff, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact and may impose any condition it considers necessary to protect the public health, safety and welfare.
10. 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 may before taking final action, refer the matter back to the Planning Commission for further consideration.

11. Approval of a request shall require passage by a four-fifths (4/5) majority vote of the City Council.
12. The Zoning Administrator shall provide the applicant and property owner with written notice of the City Council's findings of fact and decision regarding the application.
13. If a request for variance receives approval of the City Council, the City Clerk, at the applicant's expense, shall record such with the appropriate Wright County office. No building permits for the property in question will be granted until recording of the action has been completed.
14. All decisions by the City 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 Wright County District Court.
15. Whenever an application for variance has been considered and denied by the City Council, a similar application for the 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, 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 determines that the circumstances surrounding a previous application has changed significantly.
 - c. If the City Council decides to reconsider such matter by a four-fifths (4/5's) vote of the entire City Council.

⁷²20-6-5: **AGREEMENT:** The approval of a variance and the stipulations, limitations and conditions therein shall be applied to the property in question. All written and graphic materials officially submitted to the City shall be treated as a formal agreement between the applicant and the City. Once approved, no changes, modifications or alterations shall be made to any plan detail, standard, or specifications without prior submission of a plan modification request to the Zoning Administrator for review and approval.

⁷²20-6-6: **EXPIRATION OF VARIANCE APPROVAL:** Unless otherwise specified by the City, if within one (1) year after granting a variance the use as allowed by the variance shall not have been initiated or utilized, then such a variance shall become null and void

unless a petition for an extension of time in which to complete or utilize the variance has been granted by the Zoning Administrator provided that:

- A. The extension is requested in writing and filed with the City at least thirty (30) days prior to the expiration of the initial variance request.
- B. The request for extension states facts demonstrating that a good faith attempt has been made to complete or utilize the variance that has been granted.
- C. A maximum of one (1) extension shall be granted.
- D. The extension shall not exceed sixty (60) days from the initial variance expiration date.
- E. There shall be no charge for the filing of a petition for the extension.

⁷²20-6-7: **PERFORMANCE SECURITY:**

- A. Upon approval of a variance, the City shall be provided, where deemed necessary by the City Council, with a performance security as approved by the City Attorney prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said security shall guarantee conformance and compliance with the conditions of the variance and City ordinance provisions.
- B. The security shall be in the amount equal to the Zoning Administrator's estimated costs of labor and materials for the proposed improvements or development.
- C. The City shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the variance and City Code provisions has been issued by the Building Official.
- D. Failure to comply with the conditions of the variance or appeal and City Code provisions shall result in forfeiture of the security in whole or in part depending upon the degree of non-compliance and at the discretion of the City Council.
- E. 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 variance. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.

⁷²20-6-8: **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 application relates.

⁷²20-6-9: **INITIATION:** The City Council or the Planning Commission may, upon their own motion, initiate a request for a variance in conformance with the provisions of this Section. Any person owning real estate or having documented interest therein, may initiate a request for a variance applicable to said real estate in conformance with the provisions of this Section.