

Section 10.25. **Variance and Appeals.**

Subd. 1. **Board of Adjustment and Appeals.** The City Council shall act as a Board of Adjustments and Appeals and shall have the following powers:

A. To hear and decide appeals where it is alleged that there is an error in order, requirement, decisions, or determination made by the administrative official in the enforcement of the Zoning Ordinance.

B. To hear requests for variances from the literal interpretations of this Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration.

Subd. 2. **Findings of Hardship and Fact.** In consideration of all requests for a variance, the City Council acting as the Board of Adjustment and Appeals and the Planning Commission in its advisory role shall make a finding of hardship and a finding of fact. A hardship exists when:

A. The property in question cannot be put to a reasonable use if the variance is not granted, or

B. The plight of the property owner is due to circumstances unique to this property not created by the property owner, or

C. The shape or condition of the property creates unusual difficulties in developing the property.

A finding of fact exists when the proposed action will not:

A. Impair an adequate supply of light and air to the adjacent property.

B. Unreasonably increase congestion in the public right-of-way.

C. Increased danger of fire or endanger the public safety.

D. Unreasonably diminish or impair established property values within the neighborhood.

E. Cause an unreasonable strain upon existing municipal facilities and services, or

F. Be contrary to the spirit and intent of this Ordinance.

The Board of Adjustments and Appeals may impose conditions in granting the variance to insure compliance and to protect adjacent properties.

Subd. 3. **Limitations to Variances.** Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under this Ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district where the property is located.

Subd. 4. **Procedures.**

A. Requests for variances or appeals shall be filed with the Zoning Administrator on an official form. Such applications shall be accompanied by the required fee. This fee shall not be refundable. Such applications shall also be accompanied by complimentary copies of detailed written or graphic materials fully explaining the proposed request. The zoning Administrator shall refer said applications, along with all related information to the Planning Commission acting on behalf of the Board of Appeals for considerations and report.

B. The Zoning Administrator, acting on behalf of the Board of Adjustments and appeals, shall set a date for a public hearing with the notice of such hearing being published in the official newspaper of the City at least ten (10) days prior to the date of the hearing. Such notice shall also be mailed not less than ten (10) days to all property owners of record in accordance with the County tax record within three hundred fifty (350) feet of the property to which the request relates; and if the request relates to land located in the "S: Shoreland District of the "FP" Flood Plain Management District, said notice shall be mailed to the Commissioner of the Minnesota Department of natural Resources or his authorized agent at least ten (10) days prior to such hearing. A copy of the notice and a list of the property owners and addresses to which the notices were sent shall be attested to by Zoning Administrator or City Clerk and made a part of the official record. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provide a bona fide attempt to comply with this subdivision has been made.

C. The Planning Commission, acting on behalf of the Board of Adjustments and Appeals, shall consider the request and hold a public hearing at its next regular scheduled meeting unless the filing date falls within fifteen (15) days of said meeting, in which case the request will be placed on the agenda and considered at the regular meeting following the next regularly scheduled meeting. The Zoning Administrator shall refer said application, along with all related information, to the City Planning Commission, acting on behalf of the Board of Adjustments and Appeals in order to review the proposed variance or appeal.

D. The Planning Commission and City Staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony at the expense of the applicant.

E. Within sixty (60) days from the date of the public hearing, the Planning Commission, acting on behalf of the Board of Adjustments and Appeals, shall make a finding of hardship and a finding of fact and recommend such action or condition relating to the request to the City Council. Such recommendations shall be entered in and made a part of the permanent record of the City Council meeting.

F. Upon receiving the report or recommendation of the Planning Commission, or until sixty (60) days after the first Planning Commission meeting at which time the request was considered, the City Council, acting as the Board of Adjustments and Appeals, shall place the report or recommendation on the agenda for the next regular meeting. Such reports and recommendations shall be entered in and made a part of the permanent record of the City Council meeting.

G. Upon receiving the report or recommendation of the Planning Commission, the City Council may either:

1. Approve or disapprove the request as recommended by the Planning Commission, or

2. Approve or disapprove the recommendation of the Planning Commission with modifications, alterations, or differing conditions. Such modifications, alterations, or differing conditions shall be in writing and made a part of the City Council's records, or

3. Refer the recommendation back to the

Planning Commission for further consideration.

Approval of variances or appeals shall require passage by a majority vote of the City Council. The Zoning Administrator or City Clerk shall notify the applicant on the Council's action, and if the action relates to land located within the "S" Shoreland District or the "FP" Flood Plain Management District to the Commissioner of Minnesota Department of Natural Resources or his authorized representative within ten (10) days of the final decision.

H. The decisions of the Planning Commission shall be advisory to the City Council. The decisions of the City Council shall be final subject to judicial review.

Subd. 5. **Lapse of Variance or Appeal.** Whenever within one (1) year after granting a variance or appeal the work as permitted by the variance or appeal shall not have been completed, then such variance or appeal shall be come null and void unless a petition for extension of time in which to complete the work has been granted by the City Council. Such extension shall be requested in writing and filed with the Zoning Administrator at least (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. Such petition shall be presented to the Planning Commission for recommendation and to the City Council for final decision.