

304. ZONING CODE: VARIANCES AND APPEALS

304.010 BOARD OF APPEALS. The City Council is hereby established as the Board of Appeals (Board) and shall have the power to hear and decide appeals in which it is alleged that there is an error in any administrative order, requirement, decision or determination made in the interpretation or enforcement of the Zoning Code.

304.020 APPEALS OF ADMINISTRATIVE DECISIONS.

1. A person who deems himself aggrieved by an alleged error in any order, requirement, decision or determination made in the interpretation and enforcement of the Zoning Code, may appeal to the Board by filing a written appeal with the City Clerk within 30 days after the date of such order, requirement, decision or determination. The appeal shall fully state the order to be appealed and the relevant facts of the matter.

2. The Board shall conduct a public hearing within 60 days after the filing of a written appeal. The Board shall make its decision after considering the oral and written views of all interested persons expressed at the public hearing.

304.030 PETITIONS FOR VARIANCES. The Planning Commission is hereby established to hear and advise the Council on requests for variances from the literal provisions of the Zoning Code. The owner or owners of land to which the variance relates may file a petition for a variance with the Clerk. The petition shall be made on forms provided by the City Clerk. The petition shall be accompanied by plans described below and by all required fees. The City may require the petitioner to submit a certificate by a registered professional land surveyor verifying the location of all buildings, setbacks and building coverage, and certifying other facts that in the opinion of the City are necessary for evaluation of the petition.

304.040 VARIANCE REQUIREMENTS AND CRITERIA. Petitions for Variances must include all Required Information and demonstrate that Criteria for each Variance are met.

1. Required Information.

a. Legal description and address of parcel. Name, address, and phone number of applicant (and of the owner if owner is not the applicant).

b. Plot plan drawn to scale. Elevation contour lines may be required.

c. Plan showing existing and proposed new and changed structures on the lot. Existing structures on adjacent lots must also be shown.

d. Evidence demonstrating compliance with the Rice Creek Watershed District's and other Governmental Units' regulations may be required. (See Section 303.040.)

2. Criteria for Granting a Variance. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission may issue recommendations to the City Council for variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Variances to the strict application of the provisions of the Code may be granted, however, no variance may be granted that would allow any use that is prohibited within the City. Conditions and safeguards may be imposed on the variances so granted. A variance shall not be granted unless the following criteria are met:

SUBD. 1.

A. Variances 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. 2. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. Special conditions or circumstances exist which are peculiar to the land, structure, or building involved.
- ii. The condition which result in the need for the variance were not created by the applicant's action or design solution. The applicant shall have the burden of proof for showing that no other reasonable design solution exists.
- iii. The granting of a variance will result in no increase in the amount of water draining from the property.
- iv. Granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.
- v. No variance shall be granted simply because there are no objections or because those who do not object outnumber those who do.
- vi. Financial gain or loss by the applicant shall not be considered if reasonable use for the property exists under terms of the Zoning Code.

304.050

VARIANCE HEARING AND RECOMMENDATION BY THE PLANNING COMMISSION. Within 60 days after the City determines that a variance petition is complete, and all required fees and information, including plans, drawings and surveys, have been received, the Planning Commission shall conduct a public hearing and after hearing the oral and written views of all interested persons, the

Planning Commission shall make its recommendation to the City Council by a majority vote at the same meeting or at a specified future meeting thereof.

304.060 NOTICE OF HEARINGS.

1. Notice of variance hearings shall be mailed not less than ten (10) days before the date of the hearing to the person who filed the petition for variance, to the Minnesota Department of Natural Resources, and to each owner of property situated wholly or partially within 200 feet of the property lines to which the variance relates.

2. A notice of hearing for appeals of administrative decisions shall be published in the official newspaper of the City not less than ten days before the hearing. A notice shall also be mailed to the appellant.

3. No new notice need be given for any hearing which is continued to a specified future date.

304.070 FINAL DECISION. The Council shall decide all appeals of administrative decisions and petitions for variances. The decision shall be made not later than 30 days after the date of the hearing. Notice of the decision shall be mailed to the applicant with regard to any denial and explanation as to why.

304.080 FORM OF ACTION TAKEN AND RECORD THEREOF. The Council shall maintain a record of its proceedings relative to the petition for variance or appeal which shall include the minutes of its meetings and final order concerning the variance petition or appeal of administrative decision. When applicable, notice of the final order shall be sent to the Minnesota Department of Natural Resources within ten (10) days.

304.090 REVOCATION. A violation of any condition set forth or required in granting a variance shall be a violation of this Code and automatically terminates the variance. A variance shall become null and void one year after it was granted, unless made use of within the year or such longer period prescribed by the Council.

"AMENDED BY ORDINANCE 2005-1; APRIL 12, 2005."

"AMENDED BY ORDINANCE 2018-04-01; OCTOBER 9, 2018."