

**Chapter 6
VARIANCES**

SECTION:

XX-6-1: Purpose

XX-6-2: Board of Zoning Adjustments and Appeals

XX-6-3: Review Criteria

XX-6-4: Procedures

XX-6-5: Agreement

XX-6-6: Performance Security

XX-6-7: Expiration

XX-6-8: Certification of Taxes and Fees Paid

XX-6-1: PURPOSE: The purpose of this chapter is to provide for deviations from the literal provisions 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 that such actions will be in keeping with the spirit and intent of this ordinance. (Ord. 900, 18 Apr 22)

XX-6-2: BOARD OF ZONING ADJUSTMENTS AND APPEALS: The town board shall act as the board of zoning adjustments and appeals. (Ord. 900, 18 Apr 22)

XX-6-3: REVIEW CRITERIA: The board of adjustment shall not approve any variance request unless they find failure to grant the variance will result in practical difficulties. "Practical difficulties" means that the property owner proposes to use the property in a reasonable manner not permitted by this ordinance. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. The following criteria shall also be met:

- A. That the variance would be consistent with the comprehensive plan.
- B. That the variance would be in harmony with the general purposes and intent of this ordinance.
- C. That the plight of the landowner is due to circumstances unique to the property not created by the landowner.
- D. That the purpose of the variance is not exclusively economic considerations.
- E. That the granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.
- F. That the requested variance is the minimum action required to remedy the practical difficulty.

- G. The potential for the variance to impact natural resources such as surface water, groundwater, or wetlands; sites identified for rare biological species habitat; ecologically sensitive areas; or historically significant areas.
- H. No variance shall be granted that would allow for a lesser degree of flood protection than required by this ordinance.
- I. Variances shall not be approved for any use that is not allowed under this ordinance for property in the zoning district in which the parcel or lot is located. (Ord. 900, 18 Apr 22)

XX-6-4: PROCEDURES:

- A. A request for a variance shall be filed with the town on an official application form and processed in accordance with this chapter and Minnesota statutes 15.99.
 - 1. An application shall be accompanied by a fee as provided by the town fee schedule ordinance.
 - 2. 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 XX-9-4 of this ordinance.
 - 3. The request shall be considered as being officially submitted when the zoning administrator determines that there is compliance with all the information requirements.
 - 4. The board, the planning commission, and the town 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 ordinance.
- B. 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 variance.
- C. Upon receipt of said application for a variance, the town clerk shall set a public hearing to be conducted by the planning commission following proper hearing notification as applicable.

1. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least 10 days prior to the hearing.
 2. Written notification of said hearing shall be mailed to surrounding area property owners within 350 feet of the property in question at least 10 days prior to the hearing.
 3. 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.
 4. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth in this chapter, provided a bona fide attempt has been made to comply with the notice requirements of this chapter.
- D. 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 board.
- E. The applicant or a designated representative thereof shall appear before the planning commission and board 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 board may be grounds for denial of the request.
- F. 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 this chapter.
- G. The board shall not consider or act upon a variance until they have received a report and recommendation from the planning commission or until 60 days after the first regular planning commission meeting at which the request was considered.
- H. Upon completion of the report and recommendation of the planning commission, the request shall be scheduled for consideration on the agenda of the town board. Such reports and recommendations shall be entered in and made part of the permanent written record of the town board meeting.
- I. Upon receiving the report and recommendation of the planning commission and town staff, the board 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.

- J. If, upon receiving said reports and recommendations of the planning commission and town staff, the board finds that specific inconsistencies exist in the review process and thus the final action of the town board will differ from the recommendation of the planning commission, the town board may, before taking final action, refer the matter back to the planning commission for further consideration.
- K. Approval of a request shall require passage by a majority vote of the town board.
- L. The zoning administrator shall provide the applicant and property owner with written notice of the town board's findings of fact and decision regarding the application.
- M. If a request for variance receives approval of the board, the town clerk, at the applicant's expense, shall record such with the appropriate Sherburne county office. No building permits for the property in question will be granted until recording of the action has been completed.
- N. All decisions made by the board regarding a variance shall be final, except that any aggrieved person shall have the right to appeal within 30 days after delivery of the decision to the appellant, to the district court in Sherburne county. Any person seeking judicial review under this ordinance shall serve the town and all necessary parties, including any landowners, within the 30 day period defined above.
- O. Whenever an application for variance has been considered and denied by the board, a similar application for the variance affecting substantially the same property shall not be considered again by the planning commission or town board for at least one year from the date of its denial, except as follows:
 - 1. If the applicant or property owner can clearly demonstrate that the circumstances surrounding the previous variance application have changed significantly.
 - 2. If the board determines that the circumstances surrounding a previous application has changed significantly.
 - 3. If the board decides to reconsider such matter by a four-fifths vote of the entire town board. (Ord. 900, 18 Apr 22)

XX-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 town shall be treated as a formal agreement between the applicant and the town. 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. (Ord. 900, 18 Apr 22)

XX-6-6: PERFORMANCE SECURITY: Upon approval of a conditional use permit the town shall be provided with a performance security in accordance with section XX-10-2 of this ordinance. (Ord. 900, 18 Apr 22)

XX-6-7: EXPIRATION:

- A. Unless otherwise specified by the board at the time it is authorized, a variance shall be null and void and expire if the applicant fails to utilize such variance and fulfill each and every condition attached thereto within one year from the date of its authorization 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:
1. The extension is requested in writing and filed with the town at least 30 days prior to the expiration of the initial conditional use permit request.
 2. The request for extension states facts demonstrating that a good faith attempt has been made to complete or utilize the use or activity permitted in the conditional use permit.
 3. A maximum of one administrative extension shall be granted.
 4. The extension shall not exceed 90 days from the initial variance expiration date.
 5. There shall be no charge for the filing of a petition for an administrative extension.
- B. Upon receiving a recommendation from the planning commission and town staff, the board may grant an extension of the variance of greater than 90 days; provided, that:
1. The conditions described in subsections A1, A2, and A3 of this section are satisfied.
 2. The extension shall not exceed one year from the initial variance expiration date.
 3. The filing of a petition for extension is subject to fee requirements established by the town fee schedule ordinance. (Ord. 900, 18 Apr 22)

XX-6-8: CERTIFICATION OF TAXES AND FEES PAID: Prior to approving an application for a variance, the applicant shall provide certification to the town that there are no delinquent property taxes, special assessments, interest, or town utility fees due upon the parcel of land to which the variance application relates. (Ord. 900, 18 Apr 22)