

BRAINERD, MN
Chapter 515 ZONING

515-5-4 Variances

A. **Purpose and Intent.** The purpose of this Section is to provide for deviations from the literal provisions of this Ordinance in instances where their strict application and enforcement would cause practical difficulty to the individual property under consideration.

B. General Provisions and Evaluation Criteria.

1. Board of Appeals and Adjustments. The City Council shall be the Board of Appeals and the Board of Appeals and Adjustments for this City, and as provided by Minnesota Statute Section 462.354, Subd. 2 shall have the powers granted under Minnesota Statute Section 462.357, Subd. 6, as they may be amended from time to time.
2. Pursuant to Minnesota Statute Section 462.357, Subd. 6, as it may be amended from time to time, the City Council, acting as a Board of Appeals and Adjustments, may issue 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.
3. Variances shall only be permitted:
 - a. When they are in harmony with the general purposes and intent of the ordinance and
 - b. When the variances are consistent with the Comprehensive Plan
 - c. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the Zoning Ordinance.
4. "Practical Difficulties", as used in connection with the granting of a variance means that the property owner proposes to use the property in a reasonable manner not permitted by the Zoning Ordinance;
 - a. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
 - b. The variance, if granted, will not alter the essential character of the locality.
 - c. 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.
5. Variances shall be granted for earth sheltered construction as defined in Section 216C.06, 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 as 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. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

C. Procedure.

1. **Proof of Ownership or Authorization.** The applicant shall supply proof of 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 rezoning.
2. The person applying for a Variance shall fill out and submit to the Zoning Administrator a Variance request form. Applications shall be accompanied by a fee as set by City Ordinance and shall be accompanied by an electronic copy of detailed written and graphic materials. Hard copies may be requested by the Zoning Administrator.
3. The Zoning Administrator shall refer the application to the Planning Commission for review.
4. The Planning Commission shall hold a public hearing on the proposal. Notice of the public hearing shall be published in the official newspaper designated by the City Council at least ten (10) days prior to the hearing. Notice of the hearing shall also be mailed to owners of property located within three hundred fifty

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(350) feet of the outside of the land to which the Variance will be applicable. The notice shall include a description of the land and the proposed Variance. A copy of the application for the proposed Variance shall be mailed to the Commissioner of Natural Resources and where applicable the Mississippi Headwaters Board so that the Commissioner and Board will receive at least ten (10) days' notice of the hearing (this only applies to applications in the Flood Zone).

5. The City Council, after receipt of the report of the Planning Commission, may grant or deny the Variance pursuant to criteria herein established. A copy of the City Council's decision and Findings-of-Fact shall be sent to the applicant. A copy of all decisions granting Variances within the Flood Zone shall be forwarded by mail to the Commissioner of Natural Resources and where applicable the Mississippi Headwaters Board within ten (10) days of such action.
6. Whenever an application for a Variance has been considered and denied by the City Council, a similar application for a Variance affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial, unless a decision to reconsider such matter is made by not less than a majority vote of the full City Council.

D. Lapse of Variance.

1. 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:
 2. 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.
 3. 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.
 4. A maximum of one (1) extension shall be granted.
 5. The extension shall not exceed ninety (90) days from the initial Variance expiration date.
 6. There shall be no charge for the filing of a petition for the extension.
 7. If an extension exceeding 90 days is requested, the extension must be approved by the City Council after receiving a recommendation from the Planning Commission and City Staff. The extension may be granted provided that:
 - a. The conditions described in Subsection [D.1-3] above are satisfied.
 - b. The extension shall not exceed one (1) year from the initial Variance approval date.
 - c. The filing of a petition for extension is subject to fee requirements established by City Council resolution.

E. Performance Security.

1. 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.
2. The security shall be in the amount recommended by the Zoning Administrator based on estimated costs of labor and materials for the proposed improvements or development.
3. 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.

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4. 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.
5. 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.