

BRAINERD, MN
Chapter 515 ZONING

515-5 RULES AND ADMINISTRATION.

515-5-1 Zoning Administrator Duties and City Staff. The City Council shall appoint one, or multiple, Zoning Administrator(s). The appointed Zoning Administrator shall have the authority to request assistance from other City Staff as needed to effectively implement this Ordinance. The Zoning Administrator shall enforce this Ordinance and shall perform the following duties:

- A. Maintain permanent and current records of this Ordinance, including but not limited to maps, amendments, variances, and conditional uses.
- B. Receive, file, and forward all applications for appeals, variances, special uses, or other matters to the designated official bodies.
- C. Institute in the name of the City, any appropriate actions or proceedings against a violator as provided for.
- D. Serve as an ex-officio non-voting member of the Planning Commission.
- E. The Zoning Administrator shall work with any applicable City Staff, to enforce the provisions of this Ordinance.
- F. If the provisions of this Ordinance are being violated, the Zoning Administrator shall notify in writing the property owner or property owner and tenant if rental property for such violations pursuant to Section [515-5-11]. The City shall order discontinuance of illegal use of the land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Section to ensure compliance with or to prevent violation of provisions of this Ordinance.

G. Certificates of Zoning Compliance Required.

- 1. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.
- 2. Building permits, Conditional Use Permits, or Certificates of Zoning Compliance shall be issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction.
- 3. Any use, arrangement, or construction of a structure without an approved Variance shall be deemed a violation of this Ordinance, and punishable as provided by Section [515-5-11] of this Ordinance.
- 4. The Building Official, in consultation with the Zoning Administrator, may refuse to issue a Certificate of Occupancy for any building or structure so long as any violations of this Ordinance exist on the premises or there remains any unsatisfied conditions related to any permit or Variance applicable to the premises.
- 5. Zoning Coordination. Any Zoning District amendment on land adjacent to or across a public right-of-way from an adjoining county or community shall be referred to the governing unit of the adjacent community for review and comment prior to action by the City Council granting or denying the zoning district classification change. A period of at least ten (10) days shall be provided for receipt of comments; such comments shall be considered as advisory only.

H. Land Use Application Procedures Summary.

- 1. The following Table 515-5-1.1 is provided to summarize and identify the land use application and associated process for each application as described in this Section. The requirements and standards for each land use application are provided within the following Sections and are referenced in the Table. The decision-making body review identifies the minimum requirements for processing a land use application. The City Council retains the ability to request additional review from any of its recommending bodies.

Table 515-5-1.1. Land Use Application Review Procedures.

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Land Application Review Procedures						
Procedure	Section Reference	Public Hearing	MN State Statute 15.99	If City Council is checked, they are the final decision-making body.		
Land Use Application				Staff	Planning Commission	City Council
Zoning Amendment (Text or Map)	515-5-6	X	X	X	X	X
Comprehensive Plan Amendment (Text or Map)	515-5-6	X	X	X	X	X
Variance	515-5-4	X	X	X	X	X
Appeal to a Variance or Land Use Decision	515-5-11.D.			X		X
Conditional Use	515-5-2	X	X	X	X	X
Interim Use	515-5-3	X	X	X	X	X
Site Plan Review ¹	515-5-5		X	X	X	X
Planned Unit Development (PUD)						
• Pre-Application Meeting	515-5-7.J.			X		
• General Concept Plan	515-5-7.J-K			X	X	X
• Development Stage Plan	515-5-7.M	X	X	X	X	X
• Final Plan	515-5-7.N		X	X	X	X
Administrative Permit	515-5-9		X	X		
Sketch Plan ²	515-5-9		X	X		
Environmental Review ³	NA			X		X

¹ Site Plan Review subject to public hearing, Planning Commission and City Council review when required as part of another Land Use Application process.

² Sketch Plan subject to public hearing, Planning Commission and City Council review when required as part of another Land Use Application process.

³ Environmental Review must follow Minnesota State Statutes regarding process and review timeline. This City hereby incorporates the procedures and requirements by reference.

I. Other Agency Review and Review Timelines.

1. Minnesota State Statutory Review Procedures for Land Use Applications. As identified in Table [515-5-1.1] of this Section, certain land use applications are subject to the rules of procedure and deadlines for action as established within Minnesota State Statutes. The City Council shall follow the rules and requirements as established by Minnesota State Statute which may be updated from time to time. The following summary of current statutory requirements is provided.

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- a. *Minnesota State Statute 15.99.* Pursuant to Minnesota Statutes 15.99, a land use applicant shall be approved or denied within 60 days from the date of its official and complete submission unless extended pursuant to Statute or a time waiver is granted by the applicant. Pursuant to Minnesota Statutes 15.99, the Zoning Administrator is hereby authorized to extend the 60-day time limit by a time period not to exceed 60 additional days, provided that written notice of such extension is provided to the applicant before the end of the initial 60-day period. The reason for the extension must be provided in the extension letter and must include the date through which the extension is made. The applicant may also request an extension to the review timeline.
- b. *Minnesota State Statutes 462.358.* Certain land use applications also include the requirement that a preliminary and final plat be prepared. For applications including any plat process, Minnesota State Statutes 462.358 shall govern the review timeline. An application for a preliminary plat shall be approved or denied within 120 days from the date of a complete submission unless a time waiver is granted by the applicant. A preliminary plat may be approved with conditions or denied with written findings. An application for final plat, shall be approved or denied within 60 days from the date of the complete submission unless a time waiver is granted by the applicant. The application shall be in substantial compliance with the approved preliminary plat, including any modifications required as a condition of preliminary plat approval.

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515-5-2 Conditional Use Permits.

A. **Purpose and Intent.** The purpose of the Conditional Use Permit is to provide the City of Brainerd with the discretion and flexibility to achieve the goals and objectives of the comprehensive plan and to determine, what, if any, uses other than those specifically permitted may be suitable within the City's Zoning Districts.

1. Conditional Uses are listed on the Appendix A: Table of Uses. Only Conditional Uses identified on the Table shall be considered and only applications that support the goals and objectives of the Comprehensive Plan; protect and enhance the City's character, serve, in a general way the needs of the citizens; and do not negatively affect the general welfare, public health and safety of the community.
2. In determining whether or not the conditional use is to be allowed, the City may consider the nature of the adjoining land or buildings, the effect upon traffic to and from the premises, or effects on any adjoining roads and all other factors the City shall deem appropriate for consideration.
3. If a use is deemed suitable, reasonable conditions may be applied to issuance of a Conditional Use Permit, and periodic review of said permit may be required.

B. **Procedure.**

1. Request for Conditional Use Permits, as provided within this Section shall be filed with the City on an official application form. Applications shall be accompanied by a fee as required by this Ordinance and shall be accompanied by an electronic copy of detailed written and graphic materials. Hard copies may be requested by the Zoning Administrator.
2. Proof of Ownership or Authorization. The applicant shall supply proof of ownership or equitable ownership interest, a legal description and as applicable supply documented authorization from the owner(s) of the property in question to proceed with the requested Conditional Use Permit.
3. 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 at least ten (10) days prior to the hearing. Notice of the hearing shall also be mailed to owners of property located within a three hundred and fifty (350) foot radius of the outside of the land to which the conditional use will be applicable. The notice shall include a description of the land and the proposed conditional use. Failure of a property owner to receive such a notification shall not invalidate the proceedings.
4. A copy of the application for the proposed Conditional Use Permit within a Flood Zone 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. Violations to send such notice are punishable under Section [515-5-11].
5. The Zoning Administrator may request the appropriate staff persons to prepare technical reports where applicable and provide general assistance in preparing a recommendation on the request.
6. Criteria for Granting Conditional Use Permits. In granting a Conditional Use Permit, the City Council shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety, morals and general welfare of occupants or surrounding lands. Among other things, the City Council shall make the following findings where applicable.
 - a. The proposed use conforms to the Zoning District and is a permitted Conditional Use identified on the Appendix A: Table of Uses.
 - b. The proposed use meets the regulations and standards established in this Ordinance
 - c. The proposed use shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons.
 - d. The proposed use shall be sited, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

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- e. The proposed use shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.
 - f. The proposed use shall organize vehicular access and parking to minimize traffic congestion in a residential neighborhood.
 - g. The proposed use shall preserve the objectives of this Ordinance and shall be consistent with the Comprehensive Plan.
7. Conditions. In reviewing applications for conditional use permits, the City may attach whatever reasonable conditions are deemed necessary to mitigate anticipated adverse impacts associated with the proposed use, to protect the value of property within the Zoning District, and to achieve the goals of the City's Comprehensive Plan. In determining such conditions, special consideration shall be given to protecting nearby properties from objectionable views, noise, traffic, and other characteristics associated with such uses. Such conditions may include, but are not limited to, the following:
- a. Increasing the required lot size or yard setback dimension.
 - b. Limiting the height, size, or location of buildings.
 - c. Regulating ingress and egress to the property and the proposed structures thereon with particular references to vehicle and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other catastrophe.
 - d. Regulating the street width.
 - e. Increasing the number of required off-street parking spaces.
 - f. Limiting the number, size, location, or lighting of signs.
 - g. Requiring a berm, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.
 - h. Requiring dedication of some open or green space.
 - i. Regulating the appearance of the facilities or site so that they are harmonious with the neighborhood and City.
 - j. The following may be added as conditions to properties in a Flood Zone:
 - i. Modification of waste treatment and water supply facilities.
 - ii. Limitations on period of use, occupancy, and operation.
 - iii. Imposition of operational controls, sureties, and deed restrictions.
 - iv. Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
 - v. Flood-proofing measures, in accordance with the State Building Code and this Ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.
 - k. A copy of all decisions granting conditional uses 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. Violation to send such notice is punishable under Section [515-5-11].

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8. Amendments. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the Conditional Use Permit issued shall require an amended Conditional Use Permit and all procedures shall apply as if a new permit were being issued. The Zoning Administrator shall maintain a record of all Conditional Use Permits issued including information on the use, location, and conditions imposed by the City Council, time limits, review dates, and such other information as may be appropriate.
 - a. An amended Conditional Use Permit application shall be administered in a manner similar to that required for a new Conditional Use Permit, amended Conditional Use Permits shall include requests for changes in conditions, and as otherwise described in this Ordinance.
 - b. Whenever an application for a Conditional Use Permit has been considered and denied by the City Council, a similar application for the Conditional Use Permit 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.
9. Review and Enforcement. If a periodic review is included as a condition by which a Conditional Use Permit is granted, the Conditional Use Permit may be reviewed at a public hearing with notice of said hearing published at least ten (10) days prior to the review. It shall be the responsibility of the Zoning Administrator to schedule such public hearings and the owner of the land having a Conditional Use Permit shall not be required to pay a fee for said review. A waiver from a public hearing for annual review of a Conditional Use Permit may be granted at the discretion of the City Council.
 - a. In the event that the applicant violates any of the conditions set forth in this permit, the City Council shall have the authority to revoke the Conditional Use Permit outlined as follows:
 - b. The City shall conduct a public hearing to consider the revocation of a Conditional Use Permit. Notifications shall be distributed and published according to Subsection [B.3]. The public hearing shall be conducted by the Planning Commission, which shall make a recommendation to the City Council.
 - c. In considering revocation, the Planning Commission and the City Council shall consider compliance with the approved conditions of the Conditional Use Permit.
 - d. Following a vote by the City Council to revoke the Conditional Use Permit, the City shall file a certified copy thereof including a legal description of the property with the County Recorder and/or Registrar of Title.
 - e. Conditional Use Permits issued shall be recorded in the office of the County Recorder as per Minnesota Statutes.

C. Application.

1. An applicant applying for a Conditional Use Permit for an accessory use to a single-family detached or single-family attached property shall fill out and submit to the Zoning Administrator a Conditional Use Permit application form and required filing fee. This form shall contain, but not be limited to, the following data unless waived by the Zoning Administrator:
 - a. Detailed legal description of the property.
 - b. Site Plan showing location of all buildings and structures with dimensions and setbacks.
 - c. Planting plan showing pathway system, width and material, screening fences with detail, lighting system, recreational feature, if any.
 - d. Landscape plan showing location, species, and size of all plant material.
 - e. Drainage plan indicating catch basins and underground improvement.
 - f. Utility systems for sanitary sewer, water, gas, telephone, and electric which shall all be underground for new construction.

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- g. Sites adjacent to MnDOT right-of-way shall identify the right-of-way location, dimension from the centerline of the highway to the MnDOT right-of-way line, along with existing and proposed ingress and egress.
 - h. Sites adjacent to MnDOT right-of-way shall be submitted to MnDOT for review and comment.
 - i. Off-street parking, driveways, and access plan.
 - j. Off-street loading plan, if any, is necessary.
 - k. Plan for adjustment to existing rights-of-way, easements, utilities, and new dedications.
 - l. Architectural plans showing elevations, entrances, heights, floor plans and material to be used on the exterior.
 - m. Plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the location of the stream channel. Specifications for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
2. The applicant applying for a Conditional Use Permit, whether for a principal or accessory use, within a commercial or industrial Zoning District and for any multi-family properties shall fill out and submit to the Zoning Administrator a Conditional Use Permit application form and required filing fee.
3. Submission Materials. The submission for a Conditional Use Permit shall include the following:
- a. Narrative describing the proposed use. The narrative should include the following, as applicable to the application:
 - i. Proposed Use
 - ii. Description of business or activity to be conducted.
 - iii. Number of employees.
 - iv. Hours of operation.
 - b. Site Plan as described in Section [515-5-5].
 - i. The Zoning Administrator shall have the authority to except any of the submission materials identified in Section [515-5-5] Information Required. The Zoning Administrator shall evaluate the proposed use and proposed improvements to determine what materials are necessary to process the proposed application.

D. Cancellation of Conditional Use Permits.

1. Unless otherwise specified by the City Council at the time it is authorized, a Conditional Use Permit shall be null and void and expire if the applicant fails to utilize the Conditional Use Permit, or fails to fulfill all required conditions attached thereto within one (1) year from the date of its authorization, unless a petition for an extension of time in which to complete or utilize the permit 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 executed Conditional Use Permit.
 - b. 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.
 - c. A maximum of one (1) administrative extension by the Zoning Administrator shall be granted.

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- d. The extension shall not exceed ninety (90) days from the initial Conditional Use Permit expiration date.
 - e. There shall be no charge for the filing of a petition for an administrative extension.
2. If an extension is requested exceeding 90 days, the request must be reviewed and approved by the City Council. Such extension may be granted if:
- a. The conditions described in subsection [1.a.-c.] above are satisfied.
 - b. The extension shall not exceed one (1) year from the initial Conditional Use Permit expiration date.
 - c. The filing of a petition for extension is subject to fee requirements established by City Council resolution.

E. Performance Security.

- 1. Except in the case of non-income producing residential property (excluding relocated structures), upon approval of a Conditional Use Permit 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 a Building Permit or initiation of work on the proposed improvements or development. Said security shall be non-cancelable and shall guarantee conformance and compliance with the conditions of the Conditional Use Permit and the Ordinances of the City.
- 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. Said project may be handled in stages upon the discretion of the Zoning Administrator.
- 3. The City shall hold the security until completion of the proposed improvements or development and a Certificate of Occupancy indicating compliance with the Conditional Use Permit and Ordinances of the City has been issued by the Building Official.
- 4. Failure to comply with the conditions of the Conditional Use Permit or the Ordinances of the City 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 permit. Said agreement shall hold harmless the City for completion of the work and address other matters as may be determined by the City Attorney.

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515-5-3 Interim Use Permits

A. **Purpose and Intent.** The purpose and intent of allowing interim uses is:

1. To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.
2. To allow a use that is presently judged acceptable by the City Council, but that with development or redevelopment, may not be acceptable in the future or may be replaced in the future by a permitted or conditional use allowed within the respective Zoning District.
3. To allow a use which is reflective of anticipated long-range change to an area, and which is in compliance with the Comprehensive Plan provided that said use maintains harmony and compatibility with surrounding uses and is in keeping with the architectural character and design standards of existing uses and development.
4. To allow a use that is specific to a user and that is best managed through a time performance standard.

B. **Procedure.**

1. Existing Uses. Uses defined as Interim Uses which presently exist as a legal use or a legal non-conforming use within a respective Zoning District shall be considered approved and shall be treated as allowed uses.
2. New Uses. Uses defined as Interim Uses which do not presently exist within a respective Zoning District shall be processed according to the standards and procedures for a Conditional Use Permit as established by Section [515-5-2] of this Ordinance.

C. **General Standards.** An Interim Use shall comply with the following:

1. Existing Uses. Shall be in conformance with zoning and building standards in effect at the time of initial construction and development and shall continue to be governed by such regulations in the future.
2. New Uses:
 - a. Meets the standards of a Conditional Use Permit set forth in Section [515-5-2] of this Ordinance.
 - b. Conforms to the applicable performance standards of this Ordinance.
 - c. The use is allowed as an Interim Use on the Table of Uses.
 - d. The date or event that will terminate the use can be identified with certainty.
 - e. The use will not impose additional costs on the public if it is necessary for the public to take the property in the future.
 - f. The user agrees to any conditions that the City Council deems appropriate for permission of the use.

D. **Termination.** An interim use shall terminate when any of the following events first occurs:

1. The date stated in the permit.
2. Upon violation of conditions under which the permit was issued.
3. Upon change in the City's zoning regulations which render the use non-conforming.
4. The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective Zoning District.

E. **Cancellation of Interim Use Permits.** Unless otherwise specified by the City Council at the time it is authorized, an Interim Use Permit shall be null and void and expire if the applicant fails to utilize such Interim Use Permit and fulfill each and every condition attached thereto within one (1) year from the date of its authorization unless a petition for an extension of time in which to complete or utilize the permit has been granted by the Zoning Administrator.

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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.

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515-5-5 Site Plan and/or Building Plan Review

- A. **Purpose and Intent.** The purpose of this Section is to establish a formal Site Plan and Building Plan review procedure, and to provide regulations pertaining to the enforcement of site design and construction standards. An application for Site Plan and/or Building Plan review may accompany a primary land use application or may be initiated as a separate application. When processed as part of a primary land use application no separate fee or application for Site Plan or Building Plan review is required.
- B. **Zoning Administrator Approval.** Any Site Plan and/or Building Plan application accompanying a primary land use application shall follow the review procedures as described in the applicable application. All Site Plan and/or Building Plan Review of multi-family, commercial, industrial, or institutional construction shall be subject to the Information Requirements identified in subsection D. The Site Plan and/or Building Plan Review may be administratively approved if no other primary land use applications are applicable.
- C. **Exceptions to Review.** The following may be exempted from some or all of the Site Plan or Building Plan Information Requirements:
1. New on-site construction of detached single-family or attached single-family residential structures or uses or structures accessory thereto.
 2. Changes in the use of leasable space in single or multi-tenant buildings where the change of tenant does not intensify the use of such space nor require additional parking or result in an inability to maintain the required performance standards.
 3. Expansion of parking not related to modification, addition, or enlargements to the gross floor area of an existing building.
 4. Construction of structures or buildings accessory to a permitted or conditionally permitted use within the respective zoning district when such accessory use is also permitted in said Zoning District.
- D. **Information Requirements.** The applicant applying for a Site and Building Plan approval shall fill out and submit to the Zoning Administrator an application on the official application 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 as detailed below. Hard copies may be requested by the Zoning Administrator.:
1. Certificate of Survey prepared by a licensed land surveyor identifying the following:
 - a. Scale (engineering only) at one (1) inch equals one hundred (100) feet or less.
 - b. North point indication.
 - c. Existing boundaries with lot dimension and lot area.
 - d. Existing buildings, structures, and improvements.
 - e. Easements of record.
 - f. Delineated wetland boundary, to include the OHWL of any lakes or DNR waters, if applicable.
 - g. All encroachments.
 - h. Legal description.
 2. Site Plan using the current Certificate of Survey as a base depicting the following:
 - a. Name of project or development.
 - b. Name and address of developer and/or owner.
 - c. Name and address of engineer, architect, or designer.
 - d. Date of plan preparation and dates of any subsequent revisions.
 - e. All proposed improvements, including:

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- i. Required and proposed setbacks.
- ii. Location, setback and dimensions of all proposed buildings and structures.
- iii. Location of all buildings and structures within 100-feet of the exterior boundaries of the subject property.
- iv. Location, number, dimensions of all proposed parking stalls, loading areas and drive aisles, with curbing shown.
- v. Location and width of all proposed street accesses and driveways.
- vi. Location and type of all proposed lighting, including fixture details.
- vii. Provisions for storage and disposal of waste, garbage, and recyclables, including details for enclosing and screening exterior containers.
- viii. Location of freestanding signs.
- ix. Location of HVAC equipment whether ground mounted, or roof mounted.
- f. Grading Plan (using the current Certificate of Survey as a base) depicting the following:
 - i. Existing contours at two (2) foot intervals.
 - ii. Proposed grade elevations at two (2) foot maximum intervals.
 - iii. Drainage plan, including the configuration of drainage areas and calculations.
 - iv. Spot elevations.
 - v. Surface water ponding and treatment areas.
 - vi. Erosion control measures.
 - vii. Wetland replacement plan (when applicable).
 - viii. Drainage calculations for 2-, 10-, & 100-year storm events.
 - ix. Delineated wetland boundary, to include OHWL of any lakes or DNR waters.
 - x. Date of plan preparation and dates of any subsequent revisions.
- g. Landscaping Plan using the current Certificate of Survey as a base depicting the following:
 - i. Planting schedule including symbols, quantities, common and botanical names, sizes of plant materials, root specification (bare root, balled/burlapped, potted, etc.) and special installation instructions.
 - ii. Location, type, and size of all significant trees to be removed or preserved.
 - iii. Location and species of proposed plantings of all species.
 - iv. Typical sections with details of fences, walls, and planter boxes.
 - v. Typical sections with details of landscape islands, planter beds, and foundation plantings with identification of materials to be used.
 - vi. Delineation of both sodded and seeded areas with respective areas measured in square feet.
 - vii. Coverage plan for underground irrigation systems, if any.
 - viii. Other existing or proposed conditions that could be anticipated to affect landscaping.
 - ix. Date of plan preparation and dates of any subsequent revisions.
- h. Photometric Lighting Plan, to include fixture details/cut sheets/drawings and date of plan preparation and dates of any subsequent revisions.

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- i. Architectural Plans including:
 - i. Date of plan preparation and dates of any subsequent revisions.
 - ii. Architectural elevations of all principal and accessory buildings and structures (type and materials used in all exterior surfaces).
 - iii. Typical floor plans and typical room plans drawn to scale with a summary of square footage by use or activity.
- j. Utility Plan, including:
 - i. Location, sizing, and type of water and sewer system mains and proposed service connections, hydrants, valves, and manholes; or,
 - ii. Location and size of proposed primary and secondary on-site treatment systems, when allowed (if ISTS is proposed).
 - iii. Storm sewer, catch basins, invert elevation, type of castings and type of materials (refer to Engineering Manual for City standards).
 - iv. Date of plan preparations and dates of any subsequent revisions.
 - v. Estimates of forecasted water consumption.
 - vi. Location of electrical services and any transformers and meters.
- k. Other plans and information as may be required by the Zoning Administrator which may include (but not be limited to) the following:
 - i. Location, type and size (area and height) of all signs to be erected upon the subject property.
 - ii. Vicinity map showing the subject property in relation to nearby highways or major street intersections.
 - iii. Sound source control plan.
 - iv. Fire protection plan.
 - v. Proposed protective covenants or private restrictions.
 - vi. Where landscaping or man-made materials are used to provide screening from adjacent properties, a cross section shall be provided showing the perspective of the site from neighboring properties at the property line elevation.
 - vii. Traffic study.

E. **Plan Agreements.** Any Site Plan and/or Building Plan 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 specification without prior submission of a plan modification request to the Zoning Administrator.

F. **Enforcement.** The Zoning Administrator shall have the authority to order the stopping of any and all site improvement activities, when and where a violation of the provisions of this Section has been officially documented by The Zoning Administrator.

515-5-6 Zoning Amendments, Map or Text

A. Amendments to the Zoning Ordinance.

- 1. The regulations, restrictions and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed; provided, however, that no such action may be taken until after a public hearing in relation thereto, at which time parties with interest and citizens shall have an opportunity to be heard. At least ten (10) days' notice of the time and place of such hearing shall be published in a newspaper

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of general circulation in the City. Any action taken pursuant to this Section shall also be in compliance and accordance with the rules and regulations of the Department of Natural Resources, State of Minnesota, the Federal Emergency Management Agency, and Mississippi Headwaters Board.

2. The Flood Plain designation on the Official Zoning Map shall not be removed from Flood Plain areas unless it can be shown that the designation is in error, or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the Flood Plain. Special exceptions to this rule may be permitted by the Commissioner of Natural Resources if he determines that, through other measures, lands are adequately protected for the intended use.
3. All amendments to the Flood Plain or Flood Fringe Districts of this Ordinance, including amendments to the Official Zoning Map, must be submitted to, and approved by the Commissioner of Natural Resources prior to adoption.

B. Procedure.

1. Initiation. The City Council or Planning Commission may, upon their own motion, initiate a request to amend the text or the Zoning District boundaries of this Ordinance. The procedural requirements of Sections [515-4-2.B and 515-4-2.D] of this Section shall not apply to such proposed amendments except to the extent required by State Statute. Any person owning real estate or having documented interest therein, within the City may initiate a request to amend the Zoning District and Official Zoning Map boundaries or text of this Ordinance, so as to affect the said real estate.
2. Requests for rezoning (text or map) shall be filed with the City on an official application 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. Changes in the Official Map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The commissioner of Natural Resources must be given ten (10) days written notice of all hearings to consider an amendment to this Ordinance and said notice shall include a draft of the Ordinance amendment or technical study under consideration.
4. Proof of Ownership or Authorization. The applicant shall supply proof of ownership or equitable ownership interest, a legal description and as applicable supply documented authorization from the owner(s) of the property in question to proceed with the requested rezoning.
5. Upon official submission of the request, the Zoning Administrator shall set a public hearing on the request for the next regularly scheduled Planning Commission meeting occurring at least ten (10) working days from such date as a notice of the hearing is published in the official newspaper. The Zoning Administrator shall mail the same notice to the owners of the property within three hundred and fifty (350) feet of the outside of the land proposed to be rezoned. The notice shall include the description of the land and the proposed changes in zoning. Failure of a property owner to receive such notification shall not invalidate the proceedings.
6. The mailed notice requirement shall be waived for a city-wide amendment initiated by the Planning Commission or City Council.
7. Upon receiving the request and any report, recommendation and written Findings-of-Fact of the Planning Commission and the Zoning Administrator, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded and written Findings-of-Fact, and provide these written findings to the applicant.
8. The person making the application shall be notified of the action taken. The Zoning Administrator shall maintain records of amendments to the text and Official Zoning Map of the Ordinance.
9. No application of a property owner for an amendment to the text of the Ordinance or the Zoning Map shall be considered by the Planning Commission within the one (1) year period following a denial of such request,

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except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.

10. The Zoning Administrator may request the appropriate staff persons to prepare technical reports where applicable and provide general assistance in preparing a recommendation on the action.
11. The City Council and the Planning Commission shall consider possible adverse effects of the proposed amendment. Their judgment shall be based upon (but not limited to) the following factors:
 - a. The proposed action's consistency with the specific policies and provisions of the official City Comprehensive Plan.
 - b. The proposed use's compatibility with present and future land uses of the area.
 - c. The proposed use's effect upon the area in which it is proposed.
 - d. Traffic generation of the proposed use in relation to capabilities of streets serving the property.
 - e. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and its potential to overburden the City's service capacity.
 - f. The City Council, the Planning Commission, and the Zoning Administrator shall have the authority to request additional information from the applicant or to retain expert testimony at the expense of the applicant, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure on the part of the applicant to supply all necessary supportive information may be grounds for denial of the request.
 - g. If, upon receiving said reports and recommendations of the Planning Commission, 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. The City Council shall provide the Planning Commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.
 - h. Approval of a proposed text amendment shall require a majority vote of the City Council.
 - i. Approval of a proposed Zoning Map amendment which changes all or part of the existing classification of a zoning district from Residential to Commercial, Industrial, or Planned Unit Development that allows for commercial or industrial uses shall require a two-thirds (2/3) vote of the City Council.
 - j. The amendment shall not become effective until such time as the City Council approves an Ordinance reflecting said amendment and one (1) week after said Ordinance is published in the official newspaper.

515-5-7 Planned Unit Development – Overlay Zoning District

A. Purpose and Intent.

1. To encourage a more creative and efficient development of land and its improvements than is possible under the strict application of the Base Zoning District requirements such as lot sizes and building setbacks, while at the same time meeting the standards and purposes of the Comprehensive Plan for Brainerd and preserving the health, safety, and welfare of the citizens of Brainerd.
2. To allow for a mixture of residential units in an integrated and well-planned area.
3. To allow for a mixture of commercial, general business or light industrial uses that may include residential uses in a master planned area.
4. To ensure concentration of open space into more usable areas, and the preservation of the natural resources of the site including wetlands, woodlands, steep slopes, and scenic areas.
5. Facilitate the economical provision of streets and public utilities.

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6. An efficient use of land resulting in smaller networks of utilities and streets thereby lowering development costs and public investments.
7. Promotion of a desirable and creative environment that might be prevented through the strict application of the Base Zoning District and/or subdivision regulations of the City.

B. Planned Unit Development (PUD) Zoning Overlay.

1. Rezoning to Planned Unit Development (PUD). A Planned Unit Development (PUD) may include land uses from a variety of Base Zoning Districts, and may include design flexibility related to density, setbacks, building heights, lot area, lot width, etc. Any mixed-use project that does not comply with the dimensional or use standards may utilize the Planned Unit Development (PUD) Overlay Zoning District. All PUD Overlay Zoning Districts must identify the areas where flexibility from the Base Zoning District standards are established. A rezoning for a Planned Unit Development (PUD) shall be processed as outlined in Section [515-5-7] of this Ordinance and as outlined herein.

C. General Requirements. The City may approve the Planned Unit Development (PUD) only if it is found that the development satisfies all of the following standards:

1. The proposed Planned Unit Development (PUD) is in conformance with the Comprehensive Plan for Brainerd. At a minimum, the City must find that:
 - a. The use will not create an excessive burden on existing parks, schools, streets, and other public facilities and utilities, which serve or are proposed to serve the area.
 - b. The use is reasonably related to the overall needs of the City and is compatible with the surrounding land use.
 - c. The Planned Unit Development (PUD) is an effective and unified treatment of the development possibilities on the project site and the development plans provide for the preservation of unique natural amenities such as streams, stream banks, wooded cover, rough terrain, and similar areas.
 - d. The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighboring property and will not be detrimental to surrounding uses.
2. The Planned Unit Development (PUD) meets one or more of the following development criteria:
 - a. A minimum of two (2) or more principal structures is proposed.
 - b. The tract is at least two (2) acres in size.
 - c. The use is consistent with the requirements of the Zoning Ordinance.
 - d. The Planned Unit Development (PUD) can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.
 - e. Each phase of the proposed development is of sufficient size, composition, and arrangement so that its construction, marketing, and operation are feasible as a complete unit, and that provision for and construction of dwelling units and common open space are balanced and coordinated. In addition, the total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
 - f. Financing is available to the applicant on conditions and in an amount which is sufficient to assure completion of the Planned Unit Development (PUD). To evidence this finding, a written statement of financial feasibility, which is accepted by the City, shall be submitted by the applicant.
 - g. One (1) individual has been designated by the property owner(s) to be in control of the development.
 - h. The Planned Unit Development (PUD) provides for architectural diversity by way of varied building types and exterior building design.
3. Underground Utilities. In any Planned Unit Development (PUD), all utilities, including, but not limited to, telephone, electricity, gas, and cable television shall be installed underground.

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4. Utility Connections.

- a. *Water Connections.* Where more than one property is served from the same service line, a shut off valve must be located in such a way that each unit's service may be shut off and secured by the City, in addition to the normally supplied shut off at the street.
- b. *Sewer Connections.* Where more than one (1) unit is served by a sanitary sewer lateral which exceeds 300-feet in length, provision must be made for a manhole to allow adequate cleaning and maintenance of the lateral. All maintenance and cleaning shall be the responsibility of the property owner's association or owner.

5. Roadways, Private.

- a. *Design.* Private roadways within the project shall have an improved surface to 28 feet or more in width and shall be so designed as to permit the City fire trucks to provide protection to each building.

6. Parking. No portion of the required private road system may be used in calculating required off-street parking space or be used for parking.

7. Landscaping. In any Planned Unit Development (PUD), landscaping shall be provided according to a plan approved by the City Council, which shall include a detailed planting list with sizes and species indicated as part of the final plan. In assessing the landscaping plan, the City Council shall consider the natural features of the particular site, the architectural characteristics of the proposed structures and the overall scheme of the Planned Unit Development plan.

8. Public services. The proposed project shall be served by the City water and sewer system and fire hydrants shall be installed at such locations as necessary to provide fire protection.

9. Refuse. Provision for trash pick-up shall be provided according to a plan approved by the City Council.

10. Best Management Practices. All Planned Unit Developments shall incorporate Best Management Practices for stormwater management as defined by Chapter 7 of the City Code, subject to review and approval of the Zoning Administrator, Planning Commission and City Council.

11. Sidewalks and Trails. Except as otherwise determined by the City Council, concrete sidewalks not less than five (5) feet in width and/or bituminous trails not less than eight (8) feet in width shall be provided in accordance with the following:

Table 515-5-7.1. Sidewalk/Trail Requirements.

Street Type	Sidewalk/Trail Requirements
Arterial and Major Collector Streets	Sidewalk on one side of the street and trail on opposite side of street or trails on both sides of the street*
Minor Collector and Local Streets	Sidewalk on one side of the street*
Cul-de-sacs	No requirements
<i>*All sidewalks and trails shall be placed back from the street wherever possible to provide a green strip for tree planting and to promote pedestrian safety and reassurance</i>	

12. Development Agreement. Prior to a rezoning or the issuance of a building permit as part of a Planned Unit Development (PUD), the developer shall execute a development agreement with the City. The agreement shall detail all use restrictions and required improvements conditional to the Planned Unit Development (PUD) rezoning approval. The agreement shall provide for the installation within one (1) year of the off-site and on-site improvements as approved by the City Council, secured by a cash escrow or security in an amount and with conditions satisfactory to the City, to ensure the City that such improvements will be actually constructed and installed according to specifications and plans approved by the City as expressed in

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such agreement. The amount of the financial guarantee shall be one and one-half (1½) times the estimated cost of the improvements, or as determined by the City of Brainerd.

D. General Standards for Common Open Space. No open area may be accepted as common open space under the provisions of this Ordinance unless it meets the following standards:

1. The location, shape, size, and character of the common open space must be suitable for the planned development.
2. Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering the size, density, expected population, topography, and the number and type of dwellings to be provided.
3. Common open space must be suitably improved for its intended use, but common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space having regard to its topography and unimproved condition.

E. Conveyance and Maintenance of Common Open Space.

1. All land shown on the Final Development Plan as common open space must be conveyed under one of the following methods at the discretion of the City.
 - a. It may be conveyed to a public agency which will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on it.
 - b. It may be conveyed to a corporation, developer, homeowner association (incorporated or non-incorporated) or trustee provided in an indenture establishing an association or similar organization for the maintenance of the planned development. The common open space must be conveyed to the party involved subject to covenants approved by the City Council which restrict the common open space to the uses specified on the final development plan, and which provide for the maintenance of the common open space in a manner which assures its continuing use for its intended purpose.
 - c. If the common open space is conveyed to a private party and is not maintained properly to standards established by the City, the City shall have the authority to maintain the property and assess the costs back to said private party.

F. Enforcement of Development Schedule/Planned Unit Development

1. Staging. The construction and provision of all the common open spaces and public and private recreational facilities that are shown on the Final Development Plan must proceed at the same rate as development. At least once every six (6) months following the approval of the Final Development Plan, the Zoning Administrator shall review all of the building permits issued for the planned development and examine the construction that has taken place on the site. If it is found that the rate of development is faster than the rate at which common open spaces and public and private recreational facilities have been constructed and provided, this information shall be forwarded to the City Council. If the developer or landowners fail to complete the open spaces and recreation areas within 60- days after the completion of the remainder of the project, the City may finish the open space areas and assess the cost back to the developer or landowner.

G. Residential Density.

1. In order to encourage the protection of natural resources, to allow limited development in an area with unusual building characteristics due to subsoil characteristics or to encourage creative land use, a density transfer system may be allowed whereby lot sizes smaller than that normally required in a district will be allowed on the developable land in return for leaving the natural resource areas open from development. The number of dwelling units proposed for the entire site shall not exceed the total number permitted under the density indicated on the Future Land Use Plan contained in the Comprehensive Plan where the land is located. If the Planned Unit Development (PUD) contains more than one land use designation, the number of allowable dwelling units must be separately calculated for each portion of the Planned Unit Development

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(PUD) that is in a separate land use designation area and must then be combined to determine the number of dwelling units allowable in the entire Planned Unit Development (PUD).

2. The number of dwelling units which may be constructed within the Planned Unit Development (PUD) shall be determined by dividing the gross acreage of the project area by the maximum allowable density as set forth in the Base Zoning District.

H. Residential Planned Unit Development Requirements.

1. It is the intent of this section to establish special requirements for the granting of a Rezoning for residential Planned Unit Development (PUD) projects which are in compliance with the density, permitted and conditional uses allowed in a specific base district including dwellings, offices and institutional uses of one or more buildings in relation to an overall design and integrated physical plan.
 - a. *Yards.*
 - i. *Setbacks, Periphery.* The front and side yard restrictions at the periphery of the Planned Unit Development (PUD) site at a minimum shall be the same as imposed in the Base Zoning District in which the subject property is located.
 - b. *Building Separation.* Buildings within the same lot shall maintain a minimum setback of the average of the building heights of the two adjacent principal buildings.
 2. Townhouses, Cooperatives, Condominiums.
 - a. *Frontage.* Minimum unit lot frontage for townhouses shall be not less than 15 feet.
 - b. *Dwelling Unit.* Dwelling unit and accessory use requirements are in compliance with the Base Zoning District provisions in which the development is planned.
 - c. *Building Façade Treatment.* Facades greater than 48-feet in length shall incorporate wall plan projections or recesses having a depth of at least three (3) feet or more.
 - d. *Open Space.* Townhouse and multiple family projects shall have usable open space area equal to 40-percent of the total project site.

I. Commercial and Industrial Planned Unit Development.

1. The intent of this section is to establish special requirements for the granting of a Rezoning to allow commercial or industrial Planned Unit Development (PUD) projects which are in compliance with the permitted and conditional uses allowed in a specific district in one or more buildings in relation to an overall design and integrated physical plan.
2. Surfacing and Drainage.
 - a. *Surfacing.* The entire site other than that taken up by buildings or landscaping shall be paved with concrete, bituminous or paving brick.
 - b. *Drainage.* A drainage system subject to the approval of the City Engineer shall be installed.
 - c. *Yards.*
 - i. *Setbacks, periphery.* The front and side yard setbacks shall be the same as imposed in the Base Zoning District.

J. Procedure for Processing a Planned Unit Development (PUD).

1. Stages of Planned Unit Development (PUD) Plan. The processing steps for a Planned Unit Development (PUD) plan are intended to provide for an orderly development and progression of the PUD plan, with the greatest expenditure of developmental funds being made only after the City has had ample opportunity for informed decisions as to the acceptability of the various segments of the whole as the PUD plan affects the public interest. The various steps represent separate applications for purpose of review, and each step is, outlined in detail in the following sections:

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- a. *Pre-Application Meeting.* Preliminary discussions.
 - b. *General Concept Plan Application.* Consideration of overall concept and plan. The concept plan review is voluntary but strongly recommended.
 - c. *Development Stage Plan Application.* One or more detailed plans as part of the whole final plan.
 - d. *Final Plan Application.* The summary of the entire concept and each Development Stage Plan in an integrated complete and final plan.
2. Pre-Application Review. Prior to the submission of any PUD Plan to the Planning Commission, the applicant shall meet with City Staff to discuss the contemplated project relative to community development objectives for the area in question and to learn the procedural steps and exhibits required. This may include the procedural steps for a Conditional Use Permit and/or a Preliminary Plat as necessary.
 3. Neighborhood Meeting. The City may recommend the property owner/applicant hold a neighborhood meeting for informal comment and feedback prior to submitting a formal concept application.
 4. General Concept Plan.
 - a. The General Concept Plan provides an opportunity for the applicant to submit an application to the City showing his basic intent and the general nature of the entire development before incurring substantial cost. This General Concept Plan serves as the basis to solicit public comment early in the project design and development process. The General Concept Plan should include the following:
 - i. Overall maximum Planned Unit Development density range.
 - ii. Proposed location of major streets and pedestrian ways.
 - iii. Proposed location and extent of public and common open space.
 - iv. Proposed location of residential and nonresidential land uses with approximate type and intensities of development.
 - v. Proposed staging and time schedule of development.
 - vi. Other special criteria for development.
 5. General Concept Plan submission information.
 - a. *General Information.*
 - i. *Owner.* The landowner's name, address and telephone number and interest in the subject property.
 - ii. *Applicant.* The applicant's name, address, and telephone number if different from the landowner. The applicant may designate an agent to be contacted by the City, who may speak for the applicant.
 - a. *Title.* If applicant is different than the owner, evidence that the applicant has sufficient control over the subject property to effectuate the proposed Planned Unit Development (PUD), including a statement of all legal, beneficial, tenancy and contractual interests held in or affecting the subject property and including an up-to-date certified abstract of title or registered property report, and such other evidence as the City Attorney may require to show the status of title or control of the subject property.
 - iii. *Consultants.* The names and addresses of all professional consultants who have contributed to the development of the Planned Unit Development (PUD) plan being submitted, including attorney, land planner, engineer, and surveyor.
 - iv. *Zoning.* The existing zoning classification and present use of the subject property and all lands within 500-feet of the subject property.
 - v. *Map.* A single reproducible map or aerial photograph at a scale of not less than one (1) inch equals 100 feet, depicting the existing development of the subject property and all land within 500 feet thereof and showing the precise location of existing streets.

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- vi. *Narrative Description.* A written statement generally describing the proposed Planned Unit Development (PUD) and the market which it is intended to serve, showing its relationship to the City's Comprehensive Plan and how the proposed Planned Unit Development (PUD) is to be designed, arranged, and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of the City.
- vii. *Existing Site Conditions.* Where deemed necessary by the City, graphic reproductions of the existing site conditions at a scale of not less than one (1) inch equals 100 feet shall be submitted and shall contain the following:
 - a. Certificate of Survey showing lot dimensions, existing easements and utilities, and legal description.
 - b. Contours, minimum two (2) foot intervals.
 - c. Location, type, and extent of tree cover.
 - d. Steep slope analysis.
 - e. Location and extent of water bodies, wetlands, streams, and flood plains along with corresponding zoning overlays (Shoreland and Mississippi Headwaters) within three hundred (300) feet of the subject property.
 - f. Existing drainage patterns.
 - g. Vistas and significant views.
 - b. Soil conditions as they affect development.
 - i. All of the graphics should be the same scale as the final plan to allow easy cross reference. The use of overlays is recommended for clear reference.
- viii. *General Concept Drawing.* Schematic drawing of the proposed development concept including, but not limited to, the general location of major circulation elements, public and common open space, residential and other land uses.
- ix. *Number of Units.* A statement of the estimated total number of dwelling and/or other units proposed for the Planned Unit Development (PUD) and a tabulation of the proposed approximate allocations of land use expressed in acres and as a percent of the total project area, which shall include at least the following:
 - a. Area devoted to residential uses.
 - b. Area devoted to residential use by building or structure or use type.
 - c. Area devoted to common open space.
 - d. Area devoted to public open space.
 - e. Approximate area devoted to streets.
 - f. Approximate area, and potential floor area, devoted to commercial uses.
 - g. Approximate area, and potential floor area, devoted to industrial or office uses.
- x. *Staged Development.* When the Planned Unit Development (PUD) is to be constructed in stages during a period of time extending beyond a single construction season, a schedule for the development of such stages or units shall be submitted stating the approximate beginning and completion date for each such stage or unit and the proportion of the total Planned Unit Development (PUD) public or common open space and dwelling units to be provided or constructed during each such stage and the overall chronology of development to be followed from stage to stage.

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- xi. *Common Areas.* When the proposed Planned Unit Development (PUD) includes provisions for public or common open space or service facilities a statement describing the provision that is to be made for the care and maintenance of such open space or service facilities is required. If it is proposed that such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and bylaws of such entity shall be submitted during the development stage.
- xii. *Covenants.* General intent of any restrictive covenants that are to be recorded with respect to property included in the proposed Planned Unit Development (PUD).
- xiii. *Market Feasibility.* Where deemed necessary by City Staff a market feasibility study including an analysis of the proposals economic impact on the City.

6. General Concept Plan Process.

- a. 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. The applicant, or a representative thereof, shall appear before the Planning Commission to answer questions concerning the proposed development.
 - b. Planning Commission shall review and make a recommendation to the City Council on the General Concept Plan.
 - c. City Council reviews all recommendations and indicates its support or concerns about the General Concept Plan as presented or amended.
 - d. All feedback and recommendations shall be considered as guidance to the applicant. No formal action or binding decision is given for the General Concept Plan.
7. Optional Submission of Development Stage Plan. In cases of single stage Planned Unit Development (PUD) or where the applicant wishes to begin the first stage of a multiple stage Planned Unit Development (PUD) immediately, they may, at their option, submit a Development Stage Plan for the proposed Planned Unit Development (PUD) simultaneously with the submission of the General Concept Plan. In such cases, the applicant shall comply with all the provisions of this Ordinance applicable to submission of the Development Stage Plan. The Planning Commission and City Council shall consider such plans simultaneously and shall grant or deny Development Stage Plan approval in accordance with the provisions of this section.

K. Effect of General Concept Plan Approval. Planned Unit Development concept approval only provides direction for the applicant to proceed to Planned Unit Development (PUD), Development Stage Plan submission. The concept plan approval does not convey any development rights or privileges to the applicants.

L. Development Stage Plan. Development Stage Plan submissions shall depict and outline the proposed implementation of the Planned Unit Development (PUD) General Concept Plan Stage. Information from the General Concept Plan Stage may be included for background and to provide a basis for the submitted Development Stage Plan.

1. Application. Requests for Planned Unit Development (PUD), Development Stage, as provided within this Ordinance, shall be filed on an official application 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. The submission must fully explain the proposed change, development, or use, as follows:

a. *Site Plan/Preliminary Plat.*

- i. *Site Plan and Building Plan.* The applicant shall submit a Site Plan and Building Plans (if applicable) in accordance with Section [515-5-5] of this Ordinance. The Zoning Administrator shall have the authority to provide exceptions to the Information Required based on the General Concept Plan review. In addition to the Information Required, the following additional information must be submitted:

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- a. *Buildings.* The location, size, use, and arrangement including height in stories and feet and total square feet of ground area coverage and floor area, or proposed buildings, and existing buildings which will remain, if any.
 - b. *Traffic Circulation.* Location, dimensions and number of all driveways, entrances, curb cuts, parking stalls, loading spaces and access aisles, and all other circulation elements including bike and pedestrian and the total site coverage of all circulation elements. Sites adjacent to MnDOT right-of-way shall identify the right-of-way location, dimension from the center line of the highway to the MnDOT right-of-way line, along with existing and proposed ingress and egress.
 - c. Sites adjacent to MnDOT right-of-way shall be submitted to MnDOT for review and approval.
 - d. *Common Areas.* Location, designation, and total area of all common open space.
 - e. *Public Open Space.* Location, designation, and total area proposed to be conveyed or dedicated for public open space, including parks, playgrounds, school sites and recreational facilities.
- ii. *Preliminary Plat, if applicable.* A Preliminary Plat conforming to Chapter 500 of the City Code, the Subdivision Ordinance, may be required depending on the proposed PUD. The Zoning Administrator shall determine if a plat is required and shall inform the applicant during the pre-application meeting.
 - iii. *Residential Tabulation.* A tabulation indicating the number of residential dwelling units by number of bedrooms and expected population/housing profile.
 - iv. *Areas of Use.* A tabulation indicating the approximate gross square footage, if any, of commercial and industrial floor space by type of use.
- b. *Document Changes.* A statement summarizing all changes which have been made in any document, plan data or information previously submitted, together with a revised copy of any such document, plan, or data.
 - c. *Lighting Plan.* A plan illustrating site lighting along with a photometric plan as regulated by Section [515-4-8] of this Ordinance.
 - d. *Additional Data.* Such other and further information as the Zoning Administrator, Planning Commission or City Council shall find necessary for a full consideration of the entire proposed Planning Unit Development (PUD) or any stage thereof.

M. Development Stage Plan Review Schedule.

1. The applicant shall file the Development Stage Plan application within six (6) months after General Concept Plan review, together with all supporting data and filing fee, as established by Ordinance.
2. It is recommended that the developer meets with the Zoning Administrator to discuss specific development plans prior to submitting the Development Stage Plan.
3. Staff Review/Technical Assistance Reports. Upon receipt of an application for a Planned Unit Development (PUD), Development Stage Plan, the request shall be referred to appropriate City staff to ensure that informational requirements are complied with. When all informational requirements have been complied with, the request shall be considered officially submitted.
4. Other Agency Review. When appropriate, the Planned Unit Development (PUD), Development Stage Plan application shall be forwarded to other special review agencies such as the Department of Natural Resources, soil conservation services, highway departments, or other affected agencies.
5. A public hearing shall be scheduled at a meeting of the Planning Commission.
6. The applicant or a representative thereof shall appear before the Planning Commission in order to answer questions concerning the proposed development.

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7. The Planning Commission shall review said reports and plans and submit recommendations to the Council. Such recommendations shall contain the findings of the Planning Commission with respect to the conformity of the Development Stage Plan to the approved General Concept Plan. Should any changes be found to exist, the Planning Commission shall comment with respect to the merit or lack of merit of any departure of the Development Stage Plan from substantial conformity with the General Concept Plan and with respect to the compliance of the Development Stage Plan with the provisions of this Ordinance and all other applicable Federal, State and local codes and ordinances. If the Planning Commission shall find conformity or any changes merit approval and the Planning Commission shall further find the Development Stage Plan to be in all other respects completed and in compliance with this Ordinance and other applicable Federal, State, and local codes and ordinances, it shall recommend approval.
 8. Upon receipt of the Planning Commission report and recommendation, the request shall be placed on the agenda of the next regularly scheduled meeting of the City Council
 9. The City Attorney shall prepare a Planned Unit Development (PUD) Development Agreement which stipulates the specific terms and conditions approved by the City Council and accepted by the applicant. This agreement shall be signed by the Mayor of the City of Brainerd, the City Administrator, and the applicant within thirty (30) days of City Council approval of the Development Stage Plan. Where the Development Stage Plan is to be resubmitted or denied approval, the City Council action shall be by written report setting forth the reasons for its action. In all cases, a copy of the document evidencing City Council action shall be promptly delivered to the applicant.
 10. Limitation on Development Stage Plan Approval. Unless a Final Plan covering the area designated in the Development Stage Plan as the first stage of the Planned Unit Development (PUD) has been filed within six (6) months from the date the City Council grants Development Stage Plan approval, or in any case where the applicant fails to file Final Plans and to proceed with development in accordance with the provisions of this Ordinance and/or an approved Development Stage Plan, the approval shall expire. Upon application by the applicant, the City Council may at its discretion extend for not more than six months, the filing deadline for any Final Plan when, for good cause shown, such extension is necessary. In any case where Development Stage Plan approval expires, the City Council shall forthwith adopt a resolution repealing the General Concept Plan approval and the Development Stage Plan approval for that portion of the Planned Unit Development (PUD) that has received Final Plan approval and re-establishing the zoning and other ordinance provisions that would otherwise be applicable.
- N. **Final Plan.** The Final Plan is to serve as a complete, thorough, and permanent public record of the Planned Unit Development (PUD) and the manner in which it is to be developed. It shall incorporate all prior approved plans and all approved modifications thereof resulting from the Planned Unit Development (PUD) process. It shall serve in conjunction with other City ordinances and the land use regulations applicable to the Planned Unit Development (PUD). The Final Plan is intended only to add detail to, and to put in final form, the information contained in the General Concept Plan and the Development Stage Plan and shall conform to the Development Stage Plan in all respects. The Final Plan shall officially re-zone the property to PUD.
1. Final Plan Submission Information. After review of a General Concept Plan for the Planned Unit Development (PUD) and approval of a Development Stage Plan for a section or sections of the proposed Planned Unit Development (PUD), the applicant will submit the following material for review by the Zoning Administrator prior to issuance of a building permit:
 - a. *Recording Proof.* Documents establishing the recording of any easement or other documents required by the City prior to the sale of any land or dwelling unit included in the Planned Unit Development (PUD) and of the establishment and activation of any entity that is to be responsible for the management and maintenance of any public or common open space or service facility.
 - b. *Final Plans, Buildings.* Final architectural working drawings of all buildings.
 - c. *Final Engineering Plans.* Final engineering plans and specifications for streets, drainage, utilities, and other public improvements, together with a development contract providing for the installation of such improvements and financial guarantees for the completion of such improvements.

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- d. *Other Plans.* Any other plans, agreements, or specifications necessary for the Zoning Administrator to review the proposed construction. All work shall be in conformance with the Building Code of the City.
2. Final Plan Review Schedule.
- a. Upon approval of the Development Stage Plan and within the time established by this Ordinance, the applicant shall file with the Zoning Administrator a Final Plan consisting of the information and submissions required for the entire Planned Unit Development (PUD) or for one (1) or more stages. This application will be considered at the next possible regular Planning Commission meeting.
 - b. The findings and recommendations of the Planning Commission shall be forwarded to the City Council for consideration. If the Planning Commission fails to act within the time specified herein, it shall be deemed to have recommended the plan for approval.
 - c. Upon receipt of a complete Planned Unit Development (PUD) Final Plan application, the City Council shall grant approval or denial of the request to rezone the project to PUD.
 - d. The applicant shall cause the Final Plan, or such portions thereof as are appropriate, to be recorded with the County. The applicant shall provide the City with a signed copy verifying County recording within six (6) months from the date of approval.
 - e. *Building and Other Permits.* Except as otherwise expressly provided herein, upon receiving notice from the Zoning Administrator that the approved Final Plan has been recorded and upon application of the applicant pursuant to the applicant ordinances of the City, the Zoning Administrator may issue building and other permits to the applicant for development, construction and other work in the area encompassed by the approved Final Plan provided, however, that no such permit shall be issued unless the Zoning Administrator is first satisfied that the requirements of all codes and ordinances in which are applicable to the permit sought, have been satisfied.
 - f. *Limitation on Final Plan Approval.* Within one (1) year after the approval of a Final Plan for Planned Unit Development (PUD), or such shorter time as may be established by the approved development schedule, construction shall commence in accordance with such approved plan. Failure to commence construction within such period shall, unless automatically rendered void, the Planned Unit Development (PUD) permit and all approvals of the Planned Unit Development (PUD) plan and the area encompassed within the Planned Unit Development (PUD) shall thereafter be subject to those provisions of the Zoning Ordinance, and other ordinances, applicable in the district in which it is located. In such case, the City Council shall forthwith adopt an ordinance repealing the Planned Unit Development (PUD) permit and all Planned Unit Development (PUD) approvals and re-establishing the zoning and other ordinance provisions that would otherwise be applicable. The time limit established by this section may, at the discretion of the City Council, be extended for not more than one (1) year by ordinance or resolution duly adopted.

O. Coordination with Subdivision Resolution Regulations.

1. It is the intent of this Ordinance that any required subdivision review under Chapter 500, the Subdivision Ordinance, be carried out concurrently with the review of a Planned Unit Development (PUD) under this Ordinance.
2. The plans required under this section must be submitted in a form which will satisfy the requirements of the Subdivision Ordinance for the Preliminary and Final Plans required under those regulations.

P. Planned Unit Development (PUD) Review and Amendments.

1. Annual Review. The Zoning Administrator and the Planning Commission shall review all uncompleted Planned Unit Development (PUD) within the City by March 1 of each year and shall make a report to the Planning Commission and City Council on the status of the development in each of the Planned Unit Development (PUD) Districts. If the Planning Commission finds that development has not occurred within one (1) year after the original approval of the conditional use for the Planned Unit Development (PUD), the

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Planning Commission may recommend that the City Council revoke the Conditional Use Permit or the Planned Unit Development (PUD) permit.

2. Amendments to the Planned Unit Development (PUD).
 - a. Any deviation or modification from the terms or conditions of an approved Planned Unit Development (PUD), or any alteration in a project for which a Planned Unit Development (PUD) permit has been approved, shall require an amendment of the original Planned Unit Development (PUD). An application for an amendment specifying the proposed alteration shall be submitted to the City, together with a fee as provided for by Ordinance.
 - b. *Action by the Planning Commission and City Council.* The same application and review procedure shall be followed with respect to the applicant's initial request as outlined in this Section [515-5-7].

515-5-8 Building Permits and Certificates of Occupancy

- A. **Building Permits.** For the purposes of enforcing this Ordinance, a Building Permit shall be required for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure or cause same to be done in the City of Brainerd.
- B. **Application for a Permit within a Flood Zone.** Application for a permit within a Flood Zone shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: two (2) sets of plans drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.
- C. **Certificate of Zoning Compliance Required.**
 1. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this Ordinance.
 2. Building permits, Conditional Use Permits, or Certificates of Zoning Compliance shall be issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction.
 3. Any use, arrangement, or construction of a Variance with the authorized, approved plans shall be deemed a violation of this Ordinance, and punishable as provided by Section [515-5-11] of this Ordinance.
 4. The Building Official, in consultation with the Zoning Administrator, may refuse to issue a Certificate of Occupancy for any building or structure so long as any violations of this Ordinance exist on the premises or there remains any unsatisfied conditions related to any permit or Variance applicable to the premises.

515-5-9 Administrative Permits

- A. **Purpose.** The purpose of this Section is to establish regulations and procedures for the processing and consideration of activities allowed by Administrative Permit, with the goal of protecting the health, safety, and welfare of the citizens of the City.
- B. **Procedure.**
 1. Application for an Administrative Permit shall be filed by the property owner or designated agent with the Zoning Administrator on forms to be provided by the City.
 2. New applications and applications for amending Administrative Permits shall be accompanied by a non-refundable fee as set forth by resolution of the City Council.
 3. The Zoning Administrator shall review the application and related materials and shall determine that the proposal complies with all applicable evaluation criteria, codes, ordinances, and applicable performance standards.

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4. The Zoning Administrator shall consider possible adverse effects of the proposed events or activity. Judgment shall be based upon (but not limited to) the following factors:
 - a. Compliance with and effect upon the policies and provisions of the official Comprehensive Plan.
 - b. The establishment, maintenance or operation of the use, event or activity will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.
 - c. The use, event, or activity will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
 - d. The establishment of the use, event or activity will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District.
 - e. Adequate public facilities and services are available or can be reasonably provided to accommodate the use, event or activity which is proposed.
 - f. The use, event or activity shall, in all other respects, conform to the applicable regulations of the Zoning District in which it is located.
 - g. The use, event or activity and site conform to all applicable performance standards of this Ordinance.
 - h. The Zoning Administrator shall make a determination on approval or denial of the Administrative Permit within thirty (30) days from the date of submission of a complete application.
5. A written permit shall be issued to the applicant when a determination of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances, and the standards of this Ordinance shall be attached to the permit.
6. Determination of non-compliance with applicable codes, ordinances, and the standards in this paragraph shall be communicated to the applicant in writing and the application for the permit shall be considered denied unless, within ten (10) days of the date of such notice, the applicant submits revised plans and/or information with which the Zoning Administrator is able to determine compliance.
7. Unresolved disputes as to administrative application of the requirements of this paragraph shall be subject to appeal as defined by Section [515-5-11] of this Ordinance.

C. Information Requirement. The information required for all Administrative Permit applications shall include:

1. A concise statement describing the proposed use, event, or activity, including the purpose, type of merchandise involved, dates and times of operation, number of employees involved, provisions for on-site security, provisions for on-site parking, and other pertinent information required by the Zoning Administrator to fully evaluate the application.
2. A copy of the approved Site Plan or Sketch Plan, if available, for the property or an “as built” survey which accurately represents existing conditions on the site, including entrances and exits, bona fide parking and driving areas, and which accurately indicates any proposed temporary structures, including tents, stands, and signs.
 - a. If requested by the Zoning Administrator, a Site Plan or Building Plan per Section [515-5-5] of this Ordinance may be required. The Zoning Administrator shall have the authority to exempt certain some requirements based on the proposed use or improvements.
 - b. If requested by the Zoning Administrator, a Sketch Plan of the subject property may be requested. The Sketch Plan must be drawn to-scale, must be scalable and show, at a minimum, lot lines, required setback, location of improvements and any proposed improvements and structures.
3. An accurate floor plan, which in the judgment of the Zoning Administrator, is necessary to properly evaluate the location of the event and the effectiveness of available entrances and exists.

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4. A copy of the current sales tax certificate issued by the State of Minnesota, if applicable.
5. Certification that all property taxes, special assessments, interest, and utility fees due upon the parcel to which the Administrative Permit relates have been paid.
6. Proof that the applicant has insurance, in an amount acceptable to the City, to protect from risks inherent in the proposed activity.

D. Performance Standards. All uses, events or activities allowed by Administrative Permit shall conform to the applicable standards outlined in the Zoning District in which such use, event or activity is proposed.

E. Administration and Enforcement.

1. The Zoning Administrator shall keep a record of applications and Administrative Permits.
2. A copy of all Administrative Permits issued shall be forwarded to appropriate staff as determined by the Zoning Administrator.
3. Enforcement of the provisions of this paragraph shall be in accordance with Section [515-5-11] of this Ordinance. Violation of an issued permit or of the provisions of this Section also shall be grounds for denial of future permit applications.

515-5-10 Non-Conforming Lots, Buildings, Structures and Uses

A. Purpose and Intent. It is the purpose of this Section to provide for the regulation of legal non-conforming lots, buildings, structures and uses and to specify those requirements, circumstances, and conditions under which legal non-conforming lots, buildings, structures, and uses will be operated and maintained. This Ordinance establishes separate Base Zoning Districts and Overlay Districts, each of which is an appropriate area for the location of uses which are permitted in that Zoning District. It is necessary and consistent with the establishment of these Zoning Districts that non-conforming lots, buildings, structures, and uses are not allowed to continue without restriction.

B. General Provisions.

1. Conditional Uses/Interim Uses/Uses by Administrative Permit. Any established use or building legally existing prior to the effective date of this Ordinance, and which is herein classified as a conditional use, interim use, or use by administrative permit may be continued in like fashion and activity and shall automatically be considered as having received the applicable approval. Any change to such a use, including, but not limited to, building and/or site alteration, shall require a new permit be processed as provided in this Ordinance.
2. Moving Nonconforming Buildings. No nonconforming building or structure shall be moved to another lot or to any other part of the parcel of land upon which the same was constructed prior to the effective date of this Ordinance unless such movement shall bring the nonconformance into compliance with the requirements of this Ordinance.
3. Subdivision. No parcel of land or portion thereof shall be subdivided if such action results in parcels, buildings and structures becoming nonconforming.
4. Any nonconformity, including the lawful use or occupation of land or premises existing at the time of adoption of an additional control under this Ordinance, may be continued in the same size and manner, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, except as specifically provided in this Section, unless:
 - a. The nonconforming use or occupancy is discontinued for a period of more than one (1) year. Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.
 - b. Any nonconforming use is destroyed by fire or other peril to the extent greater than fifty (50) percent of its market value, and no building permit has been applied for within 180 days of when the property

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is damaged. In this case, the City of Brainerd may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

C. Non-Conforming Uses.

1. Changes to Non-Conforming Uses:

- a. When a lawful, nonconforming use of any structure, building or parcel of land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
- b. A lawful, nonconforming use of a structure, building or parcel of land may be changed to lessen the nonconformity of the use. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.

D. Non-Conforming Buildings and Structures.

1. Proposed Building or Structure. Any proposed building or structure which will, under this title, become nonconforming but for which a Building Permit has been lawfully granted prior to the effective date of this Ordinance, may be completed in accordance with the approved plans, provided construction is started within 60 days of the issuance of a building permit, is not abandoned for a period of more than 120 days, and continues to completion within two (2) years. Such building or structure shall thereafter be a legally nonconforming building or structure.

E. Non-Conforming Lots.

1. Vacant or Redeveloped Lots. Except in Floodplain and Flood Fringe districts, legal, nonconforming lots of record may be developed, provided that:
 - a. *Legally Established Lot.* The lot in question was legally established in accordance with City Code requirements existing at the time of its creation and is a separate, distinct tax parcel.
 - b. *Unsewered Lots or Parcels.* A lot or parcel of 20,000 square feet or larger, not having access to municipal sewer, shall be considered buildable provided public health concerns (potable water and sanitary sewer) can be adequately addressed.
 - c. *Access.* The lot in question has frontage on and will directly access an improved public street.
 - d. *Setback and Yard Requirements.* The setback and yard requirements of the base zoning district can be achieved while simultaneously resulting in development which complies with the character and general design of the immediate area and the objectives of the City's Comprehensive Plan and the provisions of this Ordinance.
2. Developed Lots. An existing conforming use on a lot of substandard size and/or width may be expanded or enlarged if such expansion or enlargement meets all other provisions of this Ordinance.

F. Reestablishment of Nonconforming Buildings and Structures

1. Any building or structure which at one time had a nonresidential use may be reestablished with a nonconforming use provided it is found that:
2. The building or structure and land in combination, cannot reasonably be used for a conforming purpose;
3. The proposed use is compatible with adjacent properties and the area in which it is located;
4. The proposed use will not be detrimental to the existing character and/or endanger the public health, safety or general welfare of the area;
5. The proposed use is consistent with the comprehensive plan;
6. Off-street parking is provided in accord with Section [515-4-12] Off-street Parking.
7. A public hearing is held in accord with the process described in Section [515-5-2] Conditional Use Permits.

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8. A nonconforming residential use that had a rental license expire (more than 365 days from date of license expiration) cannot be reestablished as a nonconforming use.

515-5-11 Enforcement and Appeals.

A. **Enforcing Officer.** The City Council shall appoint a Zoning Administrator. The Zoning Administrator shall enforce this Ordinance and shall perform the following duties:

1. Maintain permanent and current records of this Ordinance, including but not limited to maps, amendments, variances, and conditional uses.
2. Receive, file, and forward all applications for appeals, variances, special uses, or other matters to the designated official bodies.
3. Institute in the name of the City, any appropriate actions or proceedings against a violator as provided for.
4. Serve as an ex-officio non-voting member of the Planning Commission.
5. The Zoning Administrator shall work with the Building Department to enforce the provisions of this Ordinance.
6. If the provisions of this Ordinance are being violated, the City shall notify in writing the property owner or property owner and tenant if rental property for such violations pursuant to Chapter [4]. The City shall order discontinuance of illegal use of the land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Section to ensure compliance with or to prevent violation of provisions of this Ordinance.

B. **Violations, Penalties and Enforcement.**

1. Violations. The violation of any provision of this Ordinance or the violation of the conditions or provisions of any permit issued pursuant to this Ordinance shall be enforced by and one (1), all, or a combination of the following penalties and remedies:
 - a. Violations may be enforced as administrative offenses pursuant to Chapter 320 of the Brainerd City Code.
 - b. Violations shall be punishable as misdemeanor prescribed under State law.
 - c. The Zoning Ordinance may also be enforced by injunction, abatement, mandamus, or any other appropriate remedy ordered by a court of competent jurisdiction.
2. Penalties. Unless otherwise provided, each act of violation and every day on which such violation occurs or continues constitute a separate offense.
3. Application to Community Personnel. The failure of any officer or employee of the community to perform any official duty imposed by this Ordinance shall not subject the officer or employee to a penalty imposed for violation unless a penalty is specifically provided for such failure.
4. Equitable Release. In the event of a violation or the threatened violation of any provision of this Ordinance, or any provision or condition of a permit issued pursuant to this Ordinance, the community in addition to other remedies may institute appropriate actions or proceedings to prevent, restrain, correct, or abate such violation or threatened violation.
5. Penalties for Violation in Flood Zone.
 - a. Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of Variances or Conditional Uses) shall be punishable as described in Part A of this Section.
 - b. Nothing herein contained shall prevent the City of Brainerd from taking such other lawful action as is necessary to prevent or remedy any violation.

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- c. In responding to a suspected Ordinance violation, the Zoning Administrator and Local Government may utilize the full array of enforcement actions available to it including but not limited to prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The community must act in good faith to enforce these official controls and to correct Ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
- d. When an Ordinance violation is either discovered by or brought to the attention of the Zoning Administrator, the Zoning Administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate Department of Natural Resources Office, Federal Emergency Management Agency Regional Office, and Mississippi Headwaters Board Office, along with the community's plan of action to correct the violation to the degree possible.
- e. The Zoning Administrator shall notify the suspected party of the requirements of this Ordinance and all other official controls and the nature and extent of the suspected violation of these controls. If the structure and/or use are under construction or development, the Zoning Administrator may order the construction or development immediately halted until a proper permit or the community grants approval. If the construction or development is already completed, then the Zoning Administrator may either issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls, or to notify the responsible party to apply for an after-the-fact permit/development approval within specified period of time not to exceed 30 days.
- f. If the responsible party does not appropriately respond to the Zoning Administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this Ordinance and shall be prosecuted accordingly. The Zoning Administrator shall also, upon the lapse of the specified response period, notify the landowner to restore the land to the condition that existed prior to the violation of this Ordinance.

C. Board of Zoning Appeals. The City Council shall serve as the Board of Zoning Appeals.

D. Appeal Procedures.

- 1. The Board of Zoning Appeals shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing the Ordinance. Such an appeal can be taken by any person, firm or corporation aggrieved, or by any officer, department, board or bureau of a town, municipality, county, or state.
- 2. The Board of Zoning Appeals shall also have the power to grant variances to provisions of the Zoning Ordinance under certain conditions. The conditions for the issuance of a Variance are as indicated in Section [515-5-4] of this Ordinance. No Use Variances shall be issued by the Board of Zoning Appeals.
- 3. Hearings of the Board of Zoning Appeals shall be held within such time and upon such notice to interested parties as is provided in its adopted rules for the transaction of its business. The Board shall, within a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. Any party may appear at the hearing in person or by agent or attorney.
- 4. The Board of Zoning Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. The reasons for the Board's decision shall be stated. The decision of such board shall not be final and any person having an interest affected by such decision shall have the right to appeal to District Court in the county in which the land is located on questions of law and fact.