

# City Code - Appeal Process

## SECTION 156.103 VARIANCES AND APPEALS.

(A) *Board of Appeals and Adjustments.* The Planning Commission shall act as the Board of Appeals and Adjustments and shall hear requests for appeals and shall hear requests for and order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities.

(1) **Appeals.** Appeals to the Board may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The Board shall hear and decide appeals where it is alleged that there is an error in any order, requirement, and decision or determination made by an administrative officer in the enforcement of the zoning ordinance.

~~(2) *Variances.* The Board shall hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities.~~

~~————— (a) Variances shall only be permitted when they are in harmony with the general purpose and intent of the ordinance and when the variances are consistent with the Comprehensive Plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. **PRACTICAL DIFFICULTIES**, as used in connection with granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.~~

~~————— (b) Economic considerations alone do not constitute practical difficulties.~~

~~————— (c) Practical difficulties also include, but are not limited to, inadequate access to direct sunlight for solar energy systems.~~

~~————— (d) Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06 subdivision 14, as it may be amended from time to time, when in harmony with this chapter.~~

~~————— (e) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustments 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.~~

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### **(B) Appeal procedures.**

(1) An application to appeal a decision or judgment of the Zoning Administrator must be made on a form provided by the city. Fees for appeals are established by resolution of the City Council.

(2) One copy of the written interpretation of the Zoning Administrator being appealed and of a statement describing the basis for the appeal shall be required with the application.

(3) After an appeal has been filed, the Zoning Administrator shall set a date for consideration of the appeal by the Board of Appeals and Adjustments.

(4) Upon hearing the appeal the Board of Appeals and Adjustments shall either reaffirm or overturn the interpretation of the Zoning Administrator. In acting on the appeal the Board of Appeals and Adjustments shall set forth the basis for its decision on the appeal.

(5) Within 30 days of the action of the Board of Appeals and Adjustments on an appeal, the applicant or an affected property owner may file an appeal to the City Council of the decision of the Board of Appeals and Adjustments.

### ~~(C) Variance procedures.~~

~~(1) Applications for a variance from the dimensional standards of this chapter must be made on forms provided by the city. Fees for variances are established by resolution of the City Council.~~

~~————— (2) One copy of the information set forth in § 156.106 below shall be required with the application.~~

~~————— (3) (a) After a variance application is filed, the Zoning Administrator shall set a date for a public hearing.~~

~~————— (b) Notice of the hearing shall be posted and published at least 10 days prior to the date of the hearing, and notice shall be mailed to each property owner within 350 feet of the property to which the variance relates.~~

~~————— (c) Defects in the notice or failure to notify individual property owners shall not invalidate the proceedings, provided a good faith effort was made to comply with these provisions.~~

~~————— (4) (a) Upon hearing the request, the Board of Appeals and Adjustments shall either approve or deny the variance and shall state findings supporting the reasons for the action.~~

~~————— (b) Conditions for approval may be attached to any variance granted. Actions by the Board of Appeals and Adjustments are effective upon a simple majority of members present.~~

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~~(5) The Board of Appeals and Adjustments must find as follows in the granting of a variance from this chapter:~~

~~————— (a) Granting a variance will not adversely affect the public health, welfare and safety and will not be detrimental and injurious to property or improvements in the neighborhood;~~

~~————— (b) Strict interpretation or enforcement of the provisions of this chapter would result in a practical difficulty that is not self-created and is inconsistent with the intent of this chapter and the Comprehensive Plan;~~

~~————— (c) There are exceptional or extraordinary circumstances or conditions applicable to the property, use or facilities that do not apply generally to other properties in the same district;~~

~~————— (d) Strict or literal interpretation of this chapter would deprive the applicant of the use and enjoyment of his or her property in a manner similar to others in the same district; and~~

~~————— (e) Granting of the variance will not allow a use which is otherwise not a permitted use in the zoning district in question.~~

~~————— (6) Economic considerations alone shall not constitute a practical difficulty if reasonable use for the property exists under the terms of this chapter.~~

~~————— (7) A variance granted but not used shall become void 1 year after its effective date.~~

~~————— (8) No application for the same or essentially the same variance shall be made within 6 months of the date of denial.~~

### (D) Variance *appeal procedures*.

(1) Within 30 days of the action of the Board of Appeals and Adjustments, the applicant or an affected property owner may appeal the decision of the Board of Appeals and Adjustments to the City Council.

(2) The City Council shall hold a public hearing within 45 days of receipt of the appeal to consider granting or denying the variance request.

(Ord. 643, passed 5-18-2005; Am. Ord. 711, passed 10-19-2011)



**Application for Appeal**  
Planning and Zoning Department  
320 Oak St. S.  
Sauk Centre, MN 56378

**APPLICANT**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**PROPERTY  
LOCATION**

Zoning File Name: \_\_\_\_\_  
Address/Location: \_\_\_\_\_

**Type of Appeal:** Application is hereby made for an appeal to the:

**Planning Commission**, under provision of Chapter 153 Zoning, Subsection 156.103 Variances and Appeals of the Zoning Code, of a decision made by the Planning/Zoning Administrator

OR

**City Council**, Under provision of Chapter 153 Zoning, Subsection 156.103 Variances and Appeals of the Zoning Code of a decision made by the Planning Commission

Date of Decision: \_\_\_\_\_, 20\_\_\_\_ File No.: \_\_\_\_\_

**Grounds for Appeal:** Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding by the Planning Commission:

Attach additional sheets if necessary.

**Applicant's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **City Official:** \_\_\_\_\_

Zoning Office Use Only

File #: \_\_\_\_\_ Tentative Hearing Date: \_\_\_\_\_