

SECTION 19 - BOARD OF ADJUSTMENTS AND APPEALS

Subdivision 1. Creation and Membership.

1. A Board of Adjustment and Appeals is hereby established and vested with such authority as is hereinafter provided and as provided by Minnesota Statutes, section 462.357, subd.6. Such board shall consist of one (1) member of the Town Planning and Zoning Commission and two (2) other members. The three (3) Board members shall be appointed by the Town Board. The Board shall be paid compensation and necessary expenses as determined by the Town Board. The Board members shall be appointed for terms coinciding with terms on the Town Planning and Zoning Commission. The members will serve a three (3) year term beginning in March of each year. A member may serve a maximum of three (3) consecutive terms. The Zoning Administrator shall act as secretary of the Board. The members may be removed by the Town Board for nonperformance of duty or misconduct, after notice and opportunity to be heard. The Town Board will appoint to fill vacancies on the Board of Adjustment. The alternate members, up to two (2) and also appointed by the Town Board, shall attend meetings and participate when directed and authorized by the chair of the Board.
2. The Board of Adjustments and Appeals shall elect a chairman from among its members. It shall adopt rules for the transaction of its business and shall keep a public record of transactions, findings and determinations.
3. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board in its rules of procedure may specify.

Subdivision 2. Powers.

1. The Board of Adjustments and Appeals shall have power to grant a variance adjustment in and exception to any of the provisions of this Ordinance to the extent of the following and no further:
 - a. To vary or modify the strict application of any of the regulations or provisions contained in this Ordinance in cases in which there are practical difficulties in accordance with Minnesota Statutes; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this Ordinance.

“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; 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. 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. 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 Adjustments and Appeals or the governing body, as the case may be, 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 or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The Board or governing body, as the case may be, 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.

- b. To interpret zoning district boundaries on official zoning maps.

- c. To permit the extension of a zoning district where the boundary line thereof divides a lot in one ownership at the time of the passage of this Ordinance, but such extension of any district shall not exceed one hundred (100) feet.
2. The Board of Adjustments and Appeals shall act upon all questions as they may arise in the administration of any ordinance or official control, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by administrative official charged with enforcing any ordinance adopted pursuant to the provisions of Minnesota Statutes, chapter 462, as amended.

Subdivision 3. Appeals.

1. Any aggrieved person, firm or corporation objecting to the ruling of any administrative official on the administering of the provisions of this Ordinance or other ordinance adopted pursuant to the provisions of Minnesota Statutes, chapter 462, shall have the right to appeal to the Board of Adjustments and Appeals.
2. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of a town, municipality, county or state.
3. The Board shall make no decision on an appeal or petition until the Planning Commission has had a reasonable opportunity, not to exceed sixty (60) days, to review and report to the Board.
4. The decision of the Board shall be final, and any person having an interest affected by such Ordinance may appeal to the District Court.

Subdivision 4. Findings.

1. The Board of Adjustments and Appeals shall not grant an appeal unless it finds facts entitling the applicant to an appeal pursuant to Section 462.357 subd. 6 or 462.369 subd. 4 of Minnesota Statutes.

Subdivision 5. Procedure.

1. Application for any appeal permissible under the provisions of this SECTION shall be made to the Board of Adjustment in the form of a written application for a Building Permit or for a permit to use the property or premises as set forth in the application. Upon receipt of any application, the Board of Adjustments shall set a time and place for a public hearing before the Board on such application. At least ten (10) days before the date of the hearing, a notice of the hearing shall be published once in the official newspaper.
2. When any proposed variance is considered in a flood plain district, the board shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances sufficiently in advance so that the commissioner will receive at least ten (10) days' notice of the hearing.
3. Decisions. The board shall arrive at a decision on such appeal or variance within fifteen (15) days. In passing upon an appeal, the board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from. It shall make its decision in writing, setting forth the

finding of fact and the reasons for its decision. In granting a variance, the board may prescribe appropriate conditions and safeguards such as those specified in SECTION 15 which are in conformity with the purposes of this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance punishable under SECTION 21.

4. No variance shall have the effect of allowing in any district uses prohibited in the district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law.
5. A copy of all decisions granting variances in flood plains shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
6. Flood Insurance Notice and Record Keeping. The Zoning Administrator shall notify the applicant for a variance that: 1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and 2) Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community shall maintain a record of all variance actions, including justification for their issuance, and report such variances insured in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.