

# CHAPTER 6. VARIANCES

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## 📖 Section 600 - Application

**600.01 Application.** A variance may be initiated by the owner, user or potential user of the subject property by making application in writing to the City Clerk on such forms as the Clerk may provide for such purposes. The application shall contain such information as may be required by the Board of Appeals and Adjustments to properly consider the application. The application shall be accompanied by the fee specified from time to time by resolution of the City Council.

## 📖 Section 605 – Board of Appeals and Adjustments Consideration

**605.01 Consideration by Board.** The Board of Appeals and Adjustments shall hold a public hearing on the application for a variance within 30 days after the application is received by the City Clerk.

**605.02 Concurrent Applications.** For any variance application submitted as part of a development proposal that includes an application for a Commercial Industrial Development Permit or a Special Use Permit, the Planning & Zoning Commission shall act as the Board of Appeals and Adjustments. In such an event, all references in Chapter 6 of this Code to the Board of Appeals and Adjustments shall mean the Planning & Zoning Commission when it acts pursuant to this Section 605.02.

(Am. Ord. 2014-16, passed 1-5-2015)

## **Section 610 – Notice of Public Hearing**

**610.01 Notice of Public Hearing.** Notice of the time, place and purpose of the public hearing shall be published in the official newspaper at least ten days prior to the day of the hearing. Notice shall also be mailed at least ten days before the day of the hearing to each owner of affected property and the owners of property situated wholly or partly within 350 feet of the property affected by the variance. For purposes of giving mailed notice, owners shall be those as shown to be such on the records of the St. Louis County Auditor. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this notice provision has been made. The Board shall also submit by mail to the Commissioner of Natural Resources of the State of Minnesota a copy of an application for proposed variances from the specific provisions of the Shoreland, Wetland and Floodplain Districts sufficiently in advance so that the Commissioner will receive at least ten days' notice of the hearing.

## **Section 615 – Governing Criteria**

**615.01 Statutory Authority.** Pursuant to Minn. Stat. 462.357, subd. 6, as it may be amended from time to time, the Hermantown Board of Appeals and Adjustments, may issue variances from the provisions of the Hermantown Zoning Code. A variance is a modification or a variation of the provisions of the Hermantown Zoning Code as applied to a specific piece of property.

**615.02. Criteria/Standards.** Variances shall only be permitted:

**615.02.1.** When they are in harmony with the general purposes and intent of the Hermantown Zoning Code; and

**615.02.2.** When the variances are consistent with the Comprehensive Plan.

**615.02.3.** When the applicant for the variance establishes that there are practical difficulties in complying with the Hermantown Zoning Code.

**615.03 Practical Difficulties.** “Practical difficulties,” as used in connection with the granting of a variance, means that:

**615.03.1.** The property owner proposes to use the property in a reasonable manner not permitted by the Hermantown Zoning Code.

**615.03.2.** The plight of the landowner is due to circumstances unique to the property not created by the landowner; and

**615.03.3.** 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,

**615.04. Variance not Permitted.** Variances shall be granted for earth sheltered construction as defined in Section 615.03, when in harmony with the Hermantown Zoning Code. The Hermantown Board of Appeals and Adjustments may not permit as a variance any use that is not allowed under the Hermantown Zoning Code for property in the zone district where the affected person's land is located. The Hermantown Board of Appeals and Adjustments may permit as a variance the temporary use of a one family dwelling as a two family dwelling.

(Am. Ord. 2011-07, passed 09-19-11)

## **Section 620 – Decision by Board of Appeals and Adjustments**

**620.01 Action by Board.** The Board of Appeals and Adjustments shall make its decision on an application for a variance as soon as possible following the public hearing held by it. Action on any application shall be by majority vote of the members of the Board present and voting.

**620.02 Decision in Writing.** The decision of the Board shall be in writing with the factual basis and reasons supporting such decision set forth.

**620.03 Safeguards and Restrictions.** The Board may impose appropriate safeguards, conditions and restrictions, including time limitations and performance bonds, on the grant of any variance to ensure that the spirit and intent of the Comprehensive Plan is met and to conserve and protect property and property values in the neighborhood.

**620.04 Violations.** 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 code.

## **Section 625 – Appeal to the City Council**

**625.01 Appeal to the City Council.** The decision of the Board of Appeals and Adjustments shall be subject to appeal to the City Council by any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer, officer, department, board or bureau of the City under the procedures as set forth for appeals from decisions of the Board to the City Council under Section [355](#) of this code.

## **Section 630 – Review by City Council**

**630.01 Review by City Council.** The City Council, upon its own motion, may review any action of the Board under this chapter. Such review shall be initiated within ten days of the date of the decision of the Board by the majority vote of those Council members present and voting on the matter.

**630.02 Procedures.** Upon a review of any such action of the Board, the City Council shall proceed in accordance with the procedures set forth in Section [355](#) of this code.

## **Section 635 – Finality of Decision**

**635.01 When Decision is Final.** A decision by the Board of Appeals and Adjustments under this chapter shall not be final until any appeal period specified herein shall have expired. No action shall be taken by any party in reliance on any such decision of the Board until it shall be final. Decisions of the Council shall be final immediately.

**635.02 Filing of Copy.** After such decision becomes final, a certified copy of any variance granted shall be filed with the County Recorder or Registrar of Titles of St. Louis County.

**653.03 Mailing of Copy.** In addition, a copy of all variances granted for the specific provisions of the Shoreland, Wetlands and Floodplain Districts, shall be forwarded by mail to the Commissioner of Natural Resources within ten days of the decision on such variance becoming final.