

## **SECTION 23 - BOARD OF ADJUSTMENTS**

### **Subdivision 1: Creation and Membership**

### **Subdivision 2: Powers**

### **Subdivision 3: Procedure**

### **Subdivision 4: Findings**

### **Subdivision 5: Variances within Shorelands and Floodplain**

### **Subdivision 6: Recording**

### **Subdivision 1: Creation and Membership**

1. A Board of Adjustment is hereby established and vested with such authority as is hereinafter provided and as by Minnesota Statutes 394.21 through 394.37.
2. The Board of Adjustment shall consist of five (5) members. The members of the Board of Adjustment shall be appointed by the Board of County Commissioners after being nominated for such appointment and recommended to the Board of Commissioners by the County Planning Commission. Each member shall serve for a period of three (3) years and the terms of the three (3) members shall be staggered so that no more than two (2) terms expire in any year. Each member may be eligible at the discretion of the County Board for reappointment, but not more than three (3) consecutive three-year terms.
3. The term of each member shall begin on January 1 and continue through December 31 of the last year of his term until his successor is appointed.
4. At least four (4) members of such Board of Adjustment shall be from the unincorporated area of the County and one member shall also be a member of the County Planning Commission. No elected official of the County, nor employee of the Board of County Commissioners shall serve as a member of the Board of Adjustment.
5. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a board member from voting thereon shall be decided by a majority vote of all regular board members except the member who is being challenged.
6. In the event a vacancy occurs as a result of death, incapacity, resignation or removal of any member of the Board of Adjustment, a new member shall be appointed as above provided, but only for the unexpired term of his predecessor.
7. The Board of Adjustment may call for the removal of any member for nonperformance of duty or misconduct in office. If a member has four (4) consecutive unexcused absences in any one year, the secretary shall certify this fact to the Board of Adjustment, and the Board of Adjustment shall notify the County Board along with the suggested action. The County Board shall appoint a replacement for the unexpired term, as if the member had resigned.

8. Each member of the Board of Adjustment shall be paid such compensation as the Board of County Commissioners may provide by resolution. In addition to such compensation, all members of the Board of Adjustment shall be paid their necessary expenses in attending meetings of the Board and in the conduct of the business of the Board.
9. The Board of Adjustment shall elect a chairman and a vice-chairman from among its members and shall appoint a secretary who need not be a member of the Board. It shall adopt rules for the transaction of its business and shall keep a public record of its proceedings, findings and determinations.
10. The meetings of the Board of Adjustment shall be held at the call of its chairman and at such other times as the Board in its rules of procedure may specify.

**Subdivision 2: Powers**

1. The Board of Adjustment shall have the authority to order the issuance of variances, hear and decide appeals from and review any order, requirements, decision or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of Minnesota Statute, Section 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future use on an official map and perform such other duties as required by the official controls. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of a town, municipality, county or state.
2. An appeal from any order, requirement, decision or determination of any administrative official shall be taken within thirty (30) days after receipt of notice of the decision by the Board of Adjustment by filing with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the appellant and the officer from whom the appeal is taken and to the public and decide the same within sixty (60) days after the date of filing the appeal. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate; a stay would cause imminent peril to life or property. The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit. The reasons for the Board's decision shall be stated in writing.

The notice of appeal shall state:

- A. The particular order, requirement, decision or determination from which the appeal is taken.
- B. The name and address of the appellant.
- C. The grounds for the appeal.
- D. The relief requested by the appellant.

3. The Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on non-conformities.
  - A. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and the variances are consistent with the comprehensive plan.
  - B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," are 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 an official control; 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.
  - C. 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.
  - D. The Board of Adjustment 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.

**Subdivision 3: Procedure**

1. An application for a variance shall be filed with the Zoning Administrator; the application shall be accompanied by development plans showing such information as the Zoning Administrator may reasonably require for purpose of this Ordinance. The plans need not meet engineering or construction details so long as they contain sufficient information for the Board of Adjustment to determine whether the proposed variance will meet all applicable development standards if the variance is granted. In all cases the application shall include:
  - A. Name and address of the applicant.
  - B. The legal description of the property involved in the request for the variance.
  - C. The names and addresses of owners of the property or any persons having a legal interest therein.
  - D. A site plan showing all pertinent dimensions, buildings and significant natural features having an influence on the variance.
  - E. The variance request and a statement outlining the unique or particular situation or peculiar hardship involved in creating the need for a variance.

2. Upon receipt of the application and other material, the Zoning Administrator shall refer the proposed variance to the affected Board of Town Supervisors. The Board of Adjustment shall hold at least one (1) public hearing on any application for a variance or appeal. Notice of the purpose, time and place of such public hearing shall be published in a newspaper of general circulation in the town, municipality or other area concerned and in the official newspaper of the County at least ten (10) days prior to the date of the hearing. Written notice of such public hearing shall be mailed to all property owners of record within five hundred (500) feet of the affected property, the affected Board of Town Supervisors, and the Municipal Council of any municipality within two (2) miles of the affected property.
3. All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirements, decision or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the state shall have the right to appeal within thirty (30) days, after receipt of notice of the decision to the district court in the county in which the land is located on questions of law and fact.
4. No application for a variance which has been denied wholly or in part shall be resubmitted for a period of six (6) months from the date of said order of denial, except on the grounds of new evidence or proof of change on conditions found to be valid.
5. A violation of any condition set forth in granting a variance shall be in violation of this Ordinance and automatically terminates the variance.
6. A variance shall become void one (1) year after it was granted unless made use of.

**Subdivision 4: Findings**

1. In exercising its authority to review any order, requirement, decision, or determination made by any administrative official the Board shall not grant any appeal or variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:
  - A. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
  - B. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant, and that the granting of the variance will not alter the essential character of the locality.
2. In the case of variances they shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties in the way of carrying out the strict letter of any official control.

**Subdivision 5: Variances Within Shorelands and Floodplain**

Upon receipt of an application for a variance from the Floodplain or Shoreland Regulations, the Zoning Administrator shall forward a copy of such application to the Commissioner of the Department of Natural Resources sufficiently in advance so that the Commissioner will receive at least ten (10) days' notice of any hearing to consider such application. A copy of all decisions granting a variance to the provisions of the Floodplain or Shoreland Regulations shall be forwarded to the State Commissioner within ten (10) days of such action.

**Subdivision 6: Recording**

A certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirements, decision or determination by an administrative official, or a request for a variance shall be filed with the recorder of deeds or registrar of titles for record. The order issued by the Board of Adjustment shall include the legal description of the property involved. The Zoning Administrator shall be required to meet the requirements of this Subdivision.