

SECTION 21: VARIANCES AND APPEALS

Subdivision 1. POWERS

1. The County Board of Adjustment shall have the authority to order the issuance of variances, hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of Minnesota Statute, Sections 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 any 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 terms of any official control including restrictions placed on non-conformities. Variances 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 or practical hardship in the way of carrying out the strict letter of any official control and when the terms of the variance are consistent with the comprehensive plan. "Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use

if used under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute hardship if a reasonable use for the property exists under the terms of the ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest. MN Stat. Section 462.357 Subd. 6 (2)

Subdivision 2. PROCEDURE

1. An application for a variance shall be filed with the City 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 applicant 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 City Zoning Administrator shall refer the purposed variance to the Hutchinson Joint Planning Board. The Hutchinson Joint Planning Board shall hold at least one (1) public hearing on any application for a variance. 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 at least ten (10) days prior to 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 the Hutchinson Joint Planning Area. Following the public hearing the Hutchinson Joint Planning Board shall make recommendation regarding the request to the Board of Adjustment.

3. All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision or determination shall be final except that any aggrieved person or persons, or any department, board of 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 3. 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 and/or 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 or particular hardship in the way of carrying out the strict letter of any official control.

Subdivision 4. VARIANCES WITHIN SHORELANDS AND FLOODPLAINS

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 5. RECORDING

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