

SECTION 12 - BOARD OF ADJUSTMENT

12.1 ESTABLISHMENT OF THE BOARD OF ADJUSTMENT

A Board of Adjustment is hereby established and vested with such authority as is hereinafter provided and as provided by Minnesota Statutes, Chapter 559, Laws of 1959, as amended.

12.2 MEMBERSHIP

The Board of Adjustment shall consist of not less than three (3) nor more than seven (7) members of which at least one (1) shall be a member of the County Planning Commission and one (1) shall be from the unincorporated area of the County. Any elected officer of the County or employee of the Board of County Commissioners shall be excluded from membership. The Board of Adjustment members shall be appointed by the County Board of Commissioners for terms coinciding with terms on the County Planning Commission.

12.3 RULES AND RECORDS

The Board of Adjustment shall elect a Chairperson and Vice Chairperson from among its members. It shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. The Zoning Administrator shall act as Secretary to the Board.

The meetings of the Board of Adjustment shall be held at the call of the chairperson and at such other times as its rules of procedure may specify.

12.4 POWERS AND APPEALS

Subdivision 1. Powers. The Board of Adjustment shall have power to grant a variance to any of the provisions of this Ordinance to the extent of the following and no further:

- (1) 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 or unnecessary hardships in the way of such strict applications; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this Ordinance.
- (2) To hear and determine appeals as to the exact boundaries of Land Use Districts.
- (3) To permit the extension of a district where the boundary line thereof divides a lot in one (1) ownership at the time of the passage of this Ordinance, but such extension of any district shall not exceed one hundred (100) feet.

Subdivision 2. Appeals. The Board of Adjustment 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 an administrative official charged with enforcing any ordinance adopted

pursuant to the provisions of Section 394.21 to 394.37, Minnesota Statutes, Chapter 559, Laws of 1959, as amended.

- (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 Section 394.21 to 394.3, Minnesota Statutes, Chapter 559, Laws of 1959, as amended, shall have the right to appeal to the Board of Adjustment.
- (2) Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state.
- (3) The decision of the Board of Adjustment shall not be final, and any person having an interest affected by such Ordinance shall have the right to appeal to the District Court within thirty (30) days on a point of fact or law.

12.5 CRITERIA FOR GRANTING VARIANCES

The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions place on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control 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 official control. "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 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. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. 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 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 1. Findings Required. The Board of Adjustment shall not grant a 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:

- (1) The variance request is in harmony with the intent and purpose of official controls.
- (2) There are practical difficulties in complying with the official controls, and the proposed use of the property is reasonable. Economic considerations alone do not constitute practical difficulties.
- (3) The variance request is due to special conditions or circumstances unique to the property and not created by the property owner.

- (4) The variance cannot be alleviated by a reasonable method other than a variance and the minimum variance which would alleviate the practical difficulty is sought
- (5) The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare in the vicinity.
- (6) The request is not a use variance and shall not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law.

12.6 PROHIBITED ACTIONS

Subdivision 1. Use Variances Prohibited. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.

Subdivision 2. Lesser Degree of Flood Protection Prohibited. No variance may be granted which would allow for a lesser degree of flood protection than required by this Ordinance.

12.7 PROCEDURE

Subdivision 1. Application. Application for any appeal permissible under the provisions of this Part shall be made to the Board of Adjustment in the form of a written Zoning Permit Application for a permit or approval to use the property or premises as set forth in the application.

Subdivision 2. Public Notice. Upon receipt of any application, the Board of Adjustment shall set a time and place for a public hearing before the Board of Adjustment 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 of the County.

12.8 NOTIFICATION AND PUBLIC HEARING

Subdivision 1. Notification. All property owners of record within five hundred (500) feet of the incorporated areas and/or one-quarter (1/4) mile of the affected property or to the ten (10) properties nearest to the affected property, whichever would provide notice to the greatest number of owners of unincorporated areas where the variance or appeal is proposed shall be notified by depositing a written notice in the U.S. Mail, postage prepaid, as to the time and place of the public hearing. All municipalities within two (2) miles of the proposed Variance or Appeal shall be given proper notice.

Subdivision 2. Omission in Notification. The Zoning Administrator shall be responsible for proper publication of notices and notification to adjacent property owners. However, an error in the published Notice of Public Hearing or failure to notify a specific property owner of the application for a Variance or Appeal shall not be considered cause to declare the public hearing invalid.

Subdivision 3. Public Hearing. Upon receipt in proper form of the application and other requested material, the Houston County Board of Adjustment shall hold at least one (1) public hearing at location to be prescribed by the Board of Adjustment.

12.9 ADVERSE ENVIRONMENTAL EFFECT

The applicant for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment, may be required to demonstrate the nature and extent of the effect.

12.10 MAY IMPOSE CONDITIONS

In granting any adjustment or variance under the provisions of this Section, the Board of Adjustment shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the Ordinance, regulation or provision to which the adjustment or variance is granted.

12.11 IF DENIED, ONE YEAR WAIT TO RESUBMIT VARIANCE APPLICATION

No application for a variance shall be resubmitted for a period of one year from the date the request is denied, except the Board of Adjustment may allow a new application, if in the opinion of the Board, new evidence or a change in circumstances warrant it.

12.12 RECORDING

The Zoning Administrator shall file 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, with the Land Records Department for record. The order issued by the Board of Adjustment shall include the legal description of the property involved.