

## **SECTION 28 VARIANCES; PRACTICAL DIFFICULTIES**

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 nonconformities as provided by Minnesota Statutes, Chapter 394.27, Subdivision 7; as amended.

### **SUBDIVISION 1. VARIANCE CRITERIA**

1. 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
2. A Variance may be granted only where the strict enforcement of County zoning controls will result in "practical difficulties." A determination that a "practical difficulty" exists is based upon the consideration of the following criteria:
  - A. The property owner proposes to use the property in a reasonable manner not permitted by an official control;
  - B. The plight of the landowner is due to circumstances unique to the property not created by the landowner;
  - C. And the variance, if granted, will not alter the essential character of the locality.
  - D. Economic considerations alone do not constitute practical difficulties.
  - E. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
3. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls.
4. 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.

### **SUBDIVISION 2. VARIANCE CONDITIONS.**

The BOA 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. EXPIRATION OF VARIANCE.**

A Variance shall expire and be considered null and void one year after the Board Of Adjustments final decision to grant the Variance if the use or construction for which the Variance was granted has not begun. For the purposes of this section, construction shall include significant site preparation work including land clearing, excavation, and the installation of utilities necessary for the placement, assembly, or installation of facilities or equipment, the installation of footings, slab, foundation, posts, walls, or other portions of a building.

### **SUBDIVISION 4. USE VARIANCE.**

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.

### **SUBDIVISION 5. APPLICATION**

1. An application for a Variance shall be filed with the Zoning Administrator on forms provided by the County. The application shall be accompanied by a copy of the deed or certified survey of the property, a site plan, and any other information the Zoning Administrator may require for the purposes of administering this Ordinance.

2. An applicant must have an ownership interest in the property for which the application is made.
3. If the application does not contain all required information, the Zoning Administrator, upon receipt of the application, shall notify the applicant, in writing, within the time specified in Minnesota Statutes Section 15.99, noting what information is missing.
4. Re-application. No application for the same Variance as ruled upon by the Board of Adjustments shall be resubmitted for a period of 12 months from the date of denial of the previous application unless there has been a substantial change in circumstances as it relates to the request

#### **SUBDIVISION 6. NOTIFICATIONS**

1. The Board of Adjustment upon receipt of a proper application for a variance shall set a time and place for a public hearing before the Board on such application. At least ten (10) days in advance of any such hearing, notice of the time, place and purpose of the hearing shall be published in the official newspaper of the County and in a newspaper of general circulation in the town, municipality, or other area concerned, if there be such a newspaper.
2. An application for a variance shall be sent to all property owners of record within five hundred (500) feet of the incorporated areas and/or five hundred (500) feet 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 is proposed. Such written notice shall be sent postage prepaid in the U.S. mails and shall state the time and place of the public hearing. All municipalities within two (2) miles of the proposed variance shall be given proper notice.
3. For the purpose of the foregoing notice provision, the term "affected property" shall mean whatever number of one-sixteenth (1/16) of a section that are required to totally encompass the area subject to the variation from the terms of this ordinance.

#### **SUBDIVISION 7. PUBLIC HEARINGS**

The Board of Adjustment may continue the hearing concerning the application for a variance, or it may hold such additional hearings as it deems advisable. The Board of Adjustment shall issue its order concerning the application within ten (10) days of the conclusion of the hearing relating to any given application.

#### **SUBDIVISION 8. RECORD OF BOARD OF ADJUSTMENT ORDERS**

A certified copy of an order issued by the Board of Adjustment either granting or denying an application for a variance shall be filed by the FCZA with the County Recorder for record. The order issued by the Board shall be in writing, giving the reasons for the Board's decision and shall include a legal description of the property involved.

#### **SUBDIVISION 9. FEES**

To defray administrative costs of processing requests for variances, a fee shall be paid by the applicant. Such fee shall be established by the Board of County Commissioners.