

**SECTION 22. BOARD OF ADJUSTMENT**

**SUBDIVISION 1. CREATION AND MEMBERSHIP**

- A. A Board of Adjustment is hereby established and vested with such authority as is hereinafter provided and as provided by Minnesota Statutes 394.21 through 394.37, and shall consist of the following:
1. Five (5) members of which at least one (1) shall be a member of the Planning Commission, whose term shall coincide with the term on the Planning Commission.
  2. There shall also be at least one (1) member from the unincorporated area of the County.
- B. The Board of Adjustment terms shall coincide with the term of the Board of County Commissioners.
- C. Any elected officer of the County or employee of the Board of County Commissioners shall be excluded from membership on the Board of Adjustment.
- D. The Board members shall be appointed by the Board of County Commissioners.
- E. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a regular Board member from voting thereon shall be decided by majority vote of all regular Board members except the member who is being challenged.
- F. The Board of Adjustment may recommend removal of any of its members for nonperformance of duty or misconduct in office, and it may fill vacancies for any unexpired term, subject to approval by the Board of County Commissioners. The members of such Board of Adjustment may be paid compensation in an amount determined by the Board of County Commissioners and may be paid their necessary expenses in attending meetings of the Board and in the conduct of the business of the Board.
- G. The appointed Board of Adjustment member that serves on the Planning Commission shall act as Chairperson of the Board of Adjustment.
- H. The Board of Adjustment shall elect a Vice Chairperson from among its members. It may adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations.
- I. The Department shall act as Secretary of the Board of Adjustment.

## **SUBDIVISION 2. AUTHORITY**

The 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 ordinances adopted pursuant to the provision of sections 394.21-394.37, order the issuance of permits for structures in areas designated for future public use on an official map and perform such other duties as required by the official controls. Such appeal may be made by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state.

## **SUBDIVISION 3. APPEALS/VARIANCES**

- A. An appeal from any order, requirement, decision, or determination of the Department shall be taken in such time as shall be prescribed by this Ordinance creating the Board of Adjustment by filing with the Board of Adjustment a notice of appeal specifying the grounds thereof.
1. The Board of Adjustment shall set 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 a reasonable time.
  2. 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.
  3. 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.
- B. The Board of Adjustment shall have the exclusive power to order the issuance of variances from the terms of the official controls including restrictions placed on nonconformities.
1. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official controls in all cases when there are practical difficulties in the way of carrying out the strict letter of the official controls and when the terms of the variance are consistent with the comprehensive plan.
  2. An area variance may be granted only where the strict enforcement of the official controls will result in a practical difficulty. A determination that a practical difficulty exists upon the consideration of the following criteria:
    - a. Whether the property owner proposes to use the property in a reasonable manner, not permitted by an official control.
    - b. Whether the plight of the landowner is due to circumstances unique to the property, not created by the landowner.

- c. Whether the variance would alter the essential character of the locality.
  - d. Involvement of more than economic considerations.
  - e. Without of variance, whether the applicant/landowner would have reasonable use of the property.
3. In addition to the standard criteria listed in Subd. 3 of this Section, in situations involving an After-the-Fact Variance, the Board of Adjustment shall take into consideration and weigh the following criteria:
  - a. Whether the applicant/landowner acted in good faith or attempted to comply with this Ordinance.
  - b. Whether a substantial financial investment of money has been made.
  - c. Whether the construction has been completed.
  - d. Whether there are similar structures in the area.
  - e. Whether the benefit to the County is outweighed by the burden on the applicant, if the applicant is required to comply with this Section.
4. For the Flood Plain Overlay District, no variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of FEMA must be satisfied:
  - a. Variances shall not be issued by the County within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  - b. Variances shall only be issued by the County upon the following:
    1. A showing of good and sufficient cause,
    2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
    3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

#### **SUBDIVISION 4. PROCEDURE**

- A. An application for a variance, appeal, extension, and/or amendment of an approved variance shall be filed with the Department on an official application form and shall be accompanied by a certified land survey and any detailed written or graphic material necessary for the explanation of the request.
- B. Upon receipt of the application and other prescribed materials, the Department shall set a time and place for the public hearing before the Board.
- C. All property owners of record within five hundred (500) feet of the affected property in incorporated areas, and in unincorporated areas owners within five hundred (500) feet of the affected property or to the ten (10) properties nearest to the affected property, whichever provides the greatest number of owners, and the affected town board and any municipality within two (2) miles of the affected property shall be given written notice of the time, date, place and purpose of the hearing on the variance or appeal at least ten (10) days but not more than thirty (30) days prior to the hearing.
  - 1. The current records on file in the Office of the County Treasurer shall be deemed sufficient for notification purposes. The failure of any property owner to receive notification or defects in the notice shall not invalidate the proceedings provided a bona fide attempt to comply with the notification requirements has been made.
- D. The Department shall also give notice of the time, place, and purpose of such hearing by publication 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 but not more than thirty (30) days before the hearing.
- E. Upon receipt of an application for a variance or appeal within the Flood Plain Overlay and Shoreland districts, the Department shall forward a copy of such application to the Commissioner sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of any hearing to consider such application.
- F. The meeting of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify.
- G. The applicant, or a representative thereof, must appear before the Board of Adjustment in order to answer questions concerning the requested variance or appeal.
- H. The applicant/landowner for a variance or appeal which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment may be required by the Board to demonstrate the nature and the extent of the effect.

- I. The Board of Adjustment and the Department shall have the authority to request additional information from the applicant/landowner concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational performance conditions in relation to all pertinent sections of the official controls.
- J. In granting any variance or appeal, the Board of Adjustment may designate such conditions in connection that will, in its opinion, secure substantially the objectives of this ordinance, regulation or provision to which the application is granted. Conditions must be directly related to and bear a rough proportionally to the impact created by the variance.
- K. The applicant/landowner for the variance or appeal shall be notified in writing of the Board of Adjustment's action by the Department.
- L. A variance application may not be resubmitted for a period of at least one year from the date the request is denied, unless the Zoning Administrator determines in their sole discretion that the application is substantially changed from the earlier denied request, or that there is new evidence, or that in the opinion of the Zoning Administrator a substantial change of circumstances exists.
- M. A copy of all decisions regarding a variance or an appeal within the Shoreland and Flood Plain Overlay districts shall be forwarded to the Commissioner within ten (10) days of such action.
- N. A certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirement, decision, or determination by the Department, or a request for a variance, shall be filed with the Le Sueur County Recorder.
  - 1. The order issued by the Board of Adjustment shall include the legal description of the property involved, the nature of the variance or appeal and any conditions attached to approval.
  - 2. The Department shall be responsible for meeting these filing requirements.
- O. Flood Insurance Notice and Record Keeping. A variance or appeal within the Flood Plain Overlay District will require the Department to notify the applicant for a variance that:
  - 1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage and
  - 2. Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. The Department shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.

#### **SUBDIVISION 5. APPEALS TO DISTRICT COURT**

All decisions by the Board of Adjustment in granting the 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 of commission of the jurisdiction or of the state shall have the right to appeal as set forth in M.S. 394.27 Subdivision 9.

#### **SUBDIVISION 6. FEES**

The application for a Board of Adjustment hearing shall be accompanied by a fee as established by the Board of County Commissioners.

#### **SUBDIVISION 7. LAPSE OF VARIANCE**

- A. Whenever within one (1) year after granting a variance or appeal the work, as permitted by the variance or appeal, has not been completed, then such variance or appeal shall become null and void unless a petition for extension of time in which to complete the work has been granted by the Board of Adjustment.
- B. Such extension shall be requested in writing and filed with the Department at least thirty (30) days before the expiration of the original variance or appeal. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance or appeal.
- C. Such petition shall be presented to the Board of Adjustment for a decision.