

515.05
Special Land Use Actions

Subdivision 1. Administrative Appeal. Any person alleging that an error has occurred in any order, requirement, decision or determination made by the zoning administrator may appeal said order, requirement, decision or determination to the planning commission and city council.

- a) A request for administrative appeal shall be filed using the request for special land use action application form available at city hall. All required attachments and fees must be provided by the applicant prior to the application being considered complete. The planning commission and city council will not consider incomplete applications.
- b) Upon receipt of such request, the zoning administrator shall place the item on the planning commission agenda in accordance with the schedule available at city hall.
- c) The planning commission shall hold a public hearing on the administrative appeal. At the public hearing, the applicant, the zoning administrator, and other interested parties may provide oral and written testimony to the planning commission.
- d) The planning commission shall make written findings of fact and provide them to the city council along with a recommendation for action to be taken on the request. Any planning commission action on the request shall be considered advisory in nature.
- e) Upon receipt of the planning commission's findings of fact and recommendation, the city council may take action on the request. The city council shall be considered the board of adjustment and appeals as provided by law, and its action on the request shall be the final action taken by the city.
- f) In the event that the planning commission delays action on the request to the extent that automatic approval would occur under Minnesota Statutes, section 15.99, the city council may take action on the request to prevent such automatic approval from occurring. In such cases, further consideration by the planning commission would be moot.

Subd. 2. Variance. Any person alleging that strict enforcement of specific provisions of this section would create practical difficulties, due to circumstances unique to a particular property under consideration, may request a variance from the planning commission and city council. The city council shall be considered the Board of Adjustment and Appeals as provided by law.

- a) Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the terms of the variances are consistent with the comprehensive plan.
- b) Variances shall only be permitted when the city council finds that strict enforcement of specific provisions of this section would create practical difficulties due to circumstances unique to a particular property under consideration. Practical difficulties, as used in connection with the granting of a variance, means that the property owner:
 - i) proposes to use the property in a reasonable manner not permitted by an official control; and

- ii) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- iii) the variance, if granted, will not alter the essential character of the locality.
- c) Economic considerations alone do not constitute practical difficulties.
- d) Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- e) Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls.
- f) 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.
- g) The city council 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.
- h) A request for variance shall be filed using the request for special land use action application form available at city hall. If the applicant does not own the subject property, then the property owner must provide written consent for the application. All required attachments and fees must be provided by the applicant prior to the application being considered complete. The planning commission and city council will not consider incomplete applications.
- i) Upon receipt of such request, the zoning administrator shall place the item on the planning commission agenda in accordance with the schedule available at city hall.
- j) The zoning administrator shall send notice of the public hearing to the party listed as “taxpayer” for any properties wholly or partially within 350 feet of the subject property, based on records provided to the city by the Hennepin County taxpayer services department. Said notice shall be sent via U.S. Mail no less than 10 days prior to the public hearing. Failure of a particular party to receive notice shall not invalidate the proceedings.
- k) The planning commission shall hold a public hearing on the variance. At the public hearing, the applicant, the zoning administrator, and other interested parties may provide oral and written testimony to the planning commission.
- l) The planning commission shall make written findings of fact and provide them to the city council along with a recommendation for action to be taken on the request. The planning commission may recommend conditions for the granting of a variance to ensure compliance with the purpose and intent of this section, and to protect adjacent properties. Any planning commission action on the request shall be considered advisory in nature.
- m) Upon receipt of the planning commission’s findings of fact and recommendation, the city council may take action on the request. The city council’s action may include conditions for the granting of a variance to ensure compliance with the purpose and intent of this section, and to protect adjacent properties. The city council shall be considered the Board

of Adjustment and Appeals as provided by law, and its action on the request shall be the final action taken by the city.

- n) In the event that the planning commission delays action on the request to the extent that automatic approval would occur under Minnesota Statutes, section 15.99, the city council may take action on the request to prevent such automatic approval from occurring. In such cases, further consideration by the planning commission would be moot.

Subd. 3. Conditional Use Permit. Any person seeking to establish a use listed as conditional in a particular district may request a conditional use permit from the planning commission and city council.

- a) In addition to specific standards or criteria included in the applicable district regulations, the following criteria shall be applied in determining whether to approve a conditional use permit request:
 - 1) The consistency of the proposed use with the comprehensive plan.
 - 2) The characteristics of the subject property as they relate to the proposed use.
 - 3) The impact of the proposed use on the surrounding area.

The city council may impose transferability limitations, renewal requirements, hours of operation limitations or other operational restrictions as a condition of approval of any conditional use permit if determined by the council to be necessary to address anticipated impacts of the proposed use.

- b) A request for conditional use permit shall be filed using the request for special land use action application form available at city hall. If the applicant does not own the subject property, then the property owner must provide written consent for the application. All required attachments and fees must be provided by the applicant prior to the application being considered complete. The planning commission and city council will not consider incomplete applications.
- c) Upon receipt of such request, the zoning administrator shall place the item on the planning commission agenda in accordance with the schedule available at city hall.
- d) The zoning administrator shall publish notice of the public hearing in at least one of the city's official newspapers no less than ten days prior to the public hearing.
- e) The zoning administrator shall send notice of the public hearing to the party listed as "taxpayer" for any properties wholly or partially within 350 feet of the subject property, based on records provided to the city by the Hennepin County taxpayer services department. Said notice shall be sent via U.S. Mail no less than ten days prior to the public hearing. Failure of a particular party to receive notice shall not invalidate the proceedings.
- f) The planning commission shall hold a public hearing on the conditional use permit. At the public hearing, the applicant, the zoning administrator, and other interested parties may provide oral and written testimony to the planning commission.

- g) The planning commission shall make written findings of fact and provide them to the city council along with a recommendation for action to be taken on the request. The planning commission may recommend conditions for the granting of a conditional use permit to ensure compliance with the purpose and intent of this section, and to protect adjacent properties. Any planning commission action on the request shall be considered advisory in nature.
- h) Upon receipt of the planning commission's findings of fact and recommendation, the city council may take action on the request. The city council's action may include conditions for the granting of a conditional use permit to ensure compliance with the purpose and intent of this section, and to protect adjacent properties. The city council's action on the request shall be the final action taken by the city.
- i) In the event that the planning commission delays action on the request to the extent that automatic approval would occur under Minnesota Statutes, section 15.99, the city council may take action on the request to prevent such automatic approval from occurring. In such cases, further consideration by the planning commission would be moot.
- j) Lapse of Conditional Use Permit by Non-Use.
 - 1) If any construction activity related to an approved conditional use does not commence within 1 year of approval, then the conditional use permit shall expire and be considered null and void. A property owner may seek an extension of time by submitting a written request no less than 30 days before expiration of the conditional use permit. Such a written request shall be accompanied by a fee equal to half of the conditional use permit fee in effect at the time the extension request is submitted. The zoning administrator shall forward a completed request for extension to the planning commission for review and recommendation. There is no requirement for a public hearing or notice thereof. The planning commission shall make a recommendation to the city council. The city council will then take action on the request. The extension of time granted by the city council shall not exceed 1 year.
 - 2) If any construction activity related to an approved conditional use permit is not completed within 2 years of approval, or if the approved conditional use does not commence within 2 years of approval, then the conditional use permit shall expire and be considered null and void. A property owner may seek an extension of time by submitting a written request no less than 30 days before expiration of the conditional use permit. Such a written request shall be accompanied by a fee equal to half of the conditional use permit fee in effect at the time the extension request is submitted. The zoning administrator shall forward a completed request for extension to the planning commission for review and recommendation. There is no requirement for a public hearing or notice thereof. The planning commission shall make a recommendation to the city council. The city council will then take action on the request. The extension of time granted by the city council shall not exceed 1 year.

Subd. 4. Zoning Amendment. Any person seeking to amend any provision of section 515, including changing the zoning district of a particular parcel or parcels of land, may request a zoning amendment from the planning commission and city council.

- a) Any zoning amendment shall be evaluated based on its consistency with the comprehensive plan and the purpose and intent of this section.
- b) A request for zoning amendment shall be filed using the request for special land use action application form available at city hall. If the request is to change the zoning district of a particular parcel or parcels of land, and applicant does not own the subject property, then the property owner must provide written consent for the application. All required attachments and fees must be provided by the applicant prior to the application being considered complete.
- c) The planning commission or city council may also initiate a zoning amendment. Such an amendment may include changing the zoning district of a particular parcel or parcels of land without the consent of the property owner or owners, as long as notice of the proposed revision is published in accordance with section 515.05, subdivision 4 e).
- d) Upon receipt of such request, the zoning administrator shall place the item on the planning commission agenda in accordance with the schedule available at city hall.
- e) The zoning administrator shall publish notice of the public hearing in at least 1 of the city's official newspapers no less than 10 days prior to the public hearing.
- f) If the request is to change the zoning district of a particular parcel or parcels of land, the zoning administrator shall send notice of the public hearing to the party listed as "taxpayer" for any properties wholly or partially within 350 feet of the subject property, based on records provided to the city by the Hennepin County taxpayer services department. Said notice shall be sent via U.S. Mail no less than 10 days prior to the public hearing. Failure of a particular party to receive notice shall not invalidate the proceedings. This requirement for mailed notice shall not be applicable when the proposed changes affect more than 5 acres of land.
- g) The planning commission shall hold a public hearing on the zoning amendment. At the public hearing, the applicant, the zoning administrator, and other interested parties may provide oral and written testimony to the planning commission.
- h) The planning commission shall make written findings of fact and provide them to the city council along with a recommendation for action to be taken on the request. Any planning commission action on the request shall be considered advisory in nature.
- i) Upon receipt of the planning commission's findings of fact and recommendation, the city council may take action on the request. The city council's action on the request shall be the final action taken by the city.
- j) Zoning amendments require adoption of an ordinance and are therefore subject to the applicable provisions of city code, the city charter and state law.
- k) In the event that the planning commission delays action on the request to the extent that automatic approval would occur under Minnesota Statutes, section 15.99, the city council may take action on the request to prevent such automatic approval from occurring. In such cases, further consideration by the planning commission would be moot.