



TITLE 11
LAND DEVELOPMENT REGULATIONS

CHAPTER 11-300
ADMINISTRATION

(VARIANCE PROCEDURE AND REQUIREMENTS)

11-304.9 Variances.

(1) **When used; Process.** A request under Minn. Stat. 462.357 to vary from the standards of this title. A public hearing is required, and the Board of Adjustment and Appeals is the decision maker, subject to appeal to the City Council.

(2) **Standards for Approval.** A variance may be granted after the following findings are made:

(a) The variance is in harmony with the general purposes and intent of the ordinance from which the variance is requested.

(b) The variance is consistent with the Comprehensive Plan.

(c) The applicant demonstrates there are practical difficulties in complying with the ordinance from which the variance is sought. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Economic considerations alone do not constitute practical difficulties. In determining this standard, all the following must be met:

(i) Unless the variance is granted, the property cannot be used in a reasonable manner. If a property can be used reasonably without the granting of a variance, it can be used in a reasonable manner.

(ii) The variance requested must be the minimum to make reasonable use of the property.

(iii) The plight of the applicant or landowner is due to circumstances unique to the property not created by the applicant or landowner.

(iv) The variance, if granted, will not alter the essential character of the locality.

(d) **Special exemption for earth-sheltered construction:** Variances must be granted for earth sheltered construction as defined in Minn. Stat. §216C.06, subd. 14, when in harmony with the ordinance.

Revised City Code - 1982

Minn. Stat. 462.357 provides that: The board or governing body as the case may be 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.

An approved variance has no time limit unless specified as a condition of the variance.

2012 Minnesota Statutes

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance 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 zoning ordinance. "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 the zoning ordinance; 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 ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be 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.

216C.06 DEFINITIONS.

Subd. 14. Earth sheltered.

"Earth sheltered" means constructed so that 50 percent or more of the exterior surface is covered or in contact with earth. Exterior surface includes all walls and roof, but excludes garages and other accessory buildings. Earth covering on walls is measured from the floor of the structure's lowest level. Earth covering on the roof must be at least 12 inches deep to be included in calculations of earth covering. Partially completed buildings shall not be considered earth sheltered.