

# City of Falcon Heights Planning Commission

City Hall  
2077 Larpenteur Avenue West

## AGENDA

Tuesday, January 28, 2025  
7:00 p.m.

A. CALL TO ORDER: 7:00 p.m.

B. ROLL CALL:            Scott Wilson \_\_\_\_            Laura Paynter \_\_\_\_  
                                 Jacob Brooks \_\_\_\_            Mike Tracy \_\_\_\_  
                                 Jim Mogen \_\_\_\_              Rick Seifert \_\_\_\_  
                                 Jake Anderson \_\_\_\_

                                 Staff Liaison - Hannah Lynch \_\_\_\_  
                                 Council Liaison - Eric Meyer \_\_\_\_

C. APPROVAL OF AGENDA

D. APPROVAL OF MINUTES  
    1. November 26, 2024

E. PUBLIC HEARING - None.

F. NEW BUSINESS  
    1. 2025 Officer Nominations  
    2. Adoption of Standing Rules  
    3. 2025 Schedule  
    4. Variance Request - 1375 Larpenteur Ave W.

G. INFORMATION AND ANNOUNCEMENTS  
    1. Staff Liaison Report  
    2. Council Liaison Report

H. ADJOURN

*Next regular meeting date: February 25, 2025*

**CITY OF FALCON HEIGHTS**  
Planning Commission  
City Hall  
2077 West Larpenteur Avenue

MINUTES

November 26, 2024 at 7:00 P.M.

**A. CALL TO ORDER: 7:00 P.M.**

**B. ROLL CALL:**

Scott Wilson <u>X</u>	Laura Paynter <u>X</u>
Jacob Brooks <u>X</u>	Mike Tracy <u>X</u>
Jim Mogen <u>A</u>	Rick Seifert <u>X</u>
Jake Anderson <u>X</u>	
Staff Liaison Lynch <u>X</u>	
Council Liaison Meyer <u>X</u>	

**C. APPROVAL OF AGENDA**

*Commissioner Seifert made a motion to approve the agenda. Agenda was approved by consent.*

**D. APPROVAL OF MINUTES**

1. September 24, 2024 – Regular Meeting
2. October 22, 2024 - Workshop

*Commissioner Paynter made a motion to approve the minutes from September 24, 2024 and October 22, 2024. Agenda was approved by consent.*

**E. PUBLIC HEARING**

1. Cannabis Businesses  
*Staff Liaison Lynch gave an overview of the state regulations on cannabis businesses and the proposal for registering and regulating the businesses in the City of Falcon Heights. Falcon Heights is planning to limit registrations to one cannabis retailer, cannabis microbusiness with a retail endorsement, or cannabis mezzobusiness with a retail endorsement. They must be located at least 300' from a primary or secondary school, daycare, residential treatment facility, or attraction within a public park where minors frequent. They must be located within the B-3 zoning district and the hours of operation will be limited to between 10 am and 9 pm, seven days per week. There will be no on-site consumption permitted unless expressly permitted by the terms of its license from the state. Smoking is prohibited on-site, including in outdoor areas. Operations must take place in an enclosed building and the business cannot share a common entrance with a*

tobacco products shop. There will be no on-site consumption of cannabis or cannabis products, including lower-potency hemp edibles or beverages, at any special event.

The public hearing was opened by Chair Wilson and Staff Liaison Lynch first read the following two comments into the record from emails she received:

1. Gary Rost – “I read in the city newsletter about the public hearing to consider having the city code permit a cannabis business. Coincidentally, I happen to be reading about the cannabis industry the past week. It’s a really mediocre industry. There is a high probability that if a cannabis business did move into the city, it would ultimately go bankrupt. Here are some articles you can forward to the Planning Commission:
  - <https://www.forbes.com/sites/benjaminadams/2024/07/26/only-27-of-us-cannabis-businesses-are-profitable-survey-shows/>
  - <https://www.politico.com/news/2022/09/04/weed-companies-cant-make-money-00054541>
  - <https://time.com/6184704/legal-marijuana-economics/>
  - <https://www.forbes.com/councils/forbesbusinessdevelopmentcouncil/2020/10/19/the-challenges-of-running-a-legitimate-cannabis-business-out-of-a-duffel-bag-filled-with-cash/>
  - <https://www.sfgate.com/cannabis/article/failed-california-cannabis-distributor-18496585.php>
2. Daniel R. – “Hello. I’m writing regarding the upcoming discussion about possible cannabis business permits being granted for Falcon Heights. I am unable to make the meeting but wanted to voice my opinion. I am adamantly opposed to any cannabis business in Falcon Heights. It’s bad enough that the city allowed the affordable housing complex at Amber Union and all the trouble I have seen as a result of the residents who now live there. If you drive down Snelling near Hamline University, you can see what drug use is doing to that community. A cannabis business will only bring more problems to our peaceful community. As it stands, I’m seriously considering leaving Falcon Heights after 10 years of owning a home here. Mostly as a result of the addition of Amber Union. A cannabis business would be the final straw. Lastly, I think the city council should reschedule this discussion for a later date instead of the night before a major holiday. I hope this wasn’t intentional, as many folks are probably not going to make due to the holiday. Please let me know if you have any questions. Thank you.” In response to this email, Staff Liaison Lynch did respond and let Daniel R. know that the City cannot ban these businesses.
3. Kristen Tran (1745 Arona) then spoke in person. She stated she has lived at her residence for 26 years. She stated she just got the newsletter the day before and saw about the public hearing and questioned if her neighbors knew about it. She also stated that since she lives near Snelling and Larpenteur, she is concerned about the traffic that could be brought by the business. She asked if it would be more like a brewery or a smoke shop, and if there are parameters that could be placed on that. She stated that would be the type of business that would alarm her at that intersection.

Staff Liaison Lynch stated the public hearing was advertised through all the required channels – posted on the website, on the door, on the newsletter, on Facebook/Nextdoor, and in the Pioneer Press (at least 10 days before). She stated she

*understands the timing wasn't great for the meeting with it being the week of Thanksgiving, but the proposal must go before City Council by the end of the year and with this being the last Planning Commission meeting, this is where the meeting fell. Regarding if the business would be a standalone business, she stated in the B-3 zoning district, there are no currently unoccupied standalone buildings so it would likely go in one of the two strip malls that exist at the intersection. She also stated they would not be allowed to smoke on site, including outside. Ms. Tran asked when the public hearing announcement went up on the website and on Facebook. Staff Liaison Lynch stated the announcement went in the Pioneer Press on the 16<sup>th</sup> and 18<sup>th</sup> of the month, went on the door at City Hall on the 16<sup>th</sup>, went on the website on the 16<sup>th</sup>, and she wasn't sure when it went on Facebook without looking. Ms. Tran asked if the business could go by where Pizza Hut is. Staff Liaison Lynch stated that southeast corner of Snelling and Larpenteur is zoned Planned Unit Development, so in order to allow cannabis businesses there, the owners would need to amend their PUD which would go through a full Planning Commission public hearing and City Council meeting for approval. Ms. Tran asked if there have been requests from businesses already. Staff Liaison Lynch stated it has been a while, but there have been a few over the past year or two. Ms. Tran asked about the Snelling and Larpenteur Corridor Development Study would change the zoning for the B-3 area. Staff Liaison Lynch stated the Study did not change any of the zoning, but rather affirmed that the B-3 district is the best location for commercial businesses. She also stated that B-3 was chosen for these businesses because it was the best fit; if a district was not chosen, then the businesses could be located anywhere in the City. Ms. Tran asked about enforcement. Staff Liaison Lynch stated compliance checks will be done and also Ramsey County Sheriff's Department is the current law enforcement for the City and would be in charge of handling any complaints of disturbances or criminal activity. Ms. Tran explained she believes the decision about cannabis business feels very rushed with the deadline being the end of the year. Chair Wilson stated the Planning Commission has actually been working on this for a full year and they have looked at all the areas in the City and B-3 is the best place for the businesses, especially considering there already is a 21+ business there (Merwin's Liquors).*

- 4. Mayor Gustafson (1775 St. Mary's) was the next person to speak at the public hearing. He commended the Planning Commission for the year and a half they have spent on the issue and trying to fit a business that they really don't want to have in the City in the best location possible. He acknowledged the process has been confusing due to the Office of Cannabis Management working on rules still and a lot of unknowns as far as how best to fit this into the community. He thanked them for their service working on this and figuring out which businesses to allow and get it done by the end of the year.*

*Chair Wilson called for speakers two more times. With none speaking, Commissioner Brooks made a motion to end the public hearing. Hearing was closed by consent. Chair Wilson opened the floor to discussion from Planning Commission members.*

*Commissioner Tracy thanked Mayor Gustafson for his kind statements and thanked the other Commissioners for being fair and reasonable for how they've moved through this.*

*Chair Wilson echoed Commissioner Tracy's comments and also thanked Staff Liaison Lynch and Vice-Chair Paynter for their work on this. He believes what has been come up with is fair and thoughtful.*

*Vice-Chair Paynter questioned the second sentence in the definition of "special event." She made a change which Staff Liaison Lynch will update for the draft going to City Council. She also asked about the header in Sec. 113-255 – It says cannabis or hemp establishments. She wondered about what happened with the hemp discussion. Staff Liaison Lynch stated they included the lower-potency hemp businesses in the ordinance and they have a separate license from the state and those are not limited to one registration in the City and are not restricted by the 300' barrier.*

*Commissioner Tracy made a motion to recommend approval of the drafted changes to City Code, with the one change by Vice-Chair Paynter to the definition of "special event." A vote was taken and all were in favor. The motion passed 6-0 and the draft will be going in front of City Council on December 11.*

## **F. NEW BUSINESS**

1. None.

## **G. INFORMATION AND ANNOUNCEMENTS**

1. Staff Liaison Report

*Staff Liaison Lynch repeated the cannabis business change to City Code would go in front of City Council on December 11 and this will include an additional portion about registering the businesses, including cost to register, fines for not following the rules, etc. This is a portion of City Code that the Planning Commission does not regulate. She also stated the Larpenteur Study is complete and was approved by City Council and is up on the website. Chair Wilson also reminded the Commissioners that there will be no December meeting due to the meeting date being Christmas Eve. Staff Liaison Lynch also stated Human Rights Day is December 10. If residents received a letter that their home has racial covenants in the deed, they can sign up to come to the event to have those removed. If there are no more spots available, they should call City Hall.*

2. Council Liaison Report

*Council Liaison Meyer echoed about Human Rights Day.*

## **H. ADJOURN**

*Vice-Chair made a motion to adjourn. All were in favor. Meeting was adjourned at 7:37 PM.*



## ITEM FOR DISCUSSION

<b>Meeting Date</b>	January 28, 2025
<b>Agenda Item</b>	F1
<b>Attachment</b>	None.
<b>Submitted By</b>	Hannah Lynch, Community Development Coordinator / Planner

<b>Item</b>	2025 Officer Nominations
<b>Description</b>	<p>The Commission must nominate and elect officers for 2025. Historically, most Commissions consist of a Chair, Vice Chair, and Secretary. Brief descriptions of these positions are as follows:</p> <p>Chair - Conducts the meeting, opens/closes public hearings, calls for votes, consults with staff regarding agenda topics</p> <p>Vice Chair - Fills duties in the Chair's absence</p> <p>Secretary - Takes official minutes during meetings and sends to staff for review and approval at next meeting.</p>
<b>Budget Impact</b>	None.
<b>Attachment(s)</b>	None.
<b>Action(s) Requested</b>	Staff recommends nominating and electing officers for 2025.



## ITEM FOR DISCUSSION

<b>Meeting Date</b>	January 28, 2025
<b>Agenda Item</b>	F2
<b>Attachment</b>	See below.
<b>Submitted By</b>	Hannah Lynch, Community Development Coordinator / Planner

<b>Item</b>	Adoption of Standing Rules for 2025
<b>Description</b>	<p>Introduction to the current Planning Commission Standing Rules:</p> <p>In the belief that the best decisions are made by the best informed decision makers and that the public decision process is best served when the public has every opportunity to present views, the following rules are established to govern regular and special commission meetings as well as formal public hearings. There are several goals behind these rules.</p> <ol style="list-style-type: none"> <li>1. In general, free and open discussion by all interested parties should be an essential part of the decision making process.</li> <li>2. The commission process should have as little procedural overhead as possible.</li> <li>3. Time is better spent on substantial matters rather than pro forma matters.</li> </ol>
<b>Budget Impact</b>	None.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Sec. 2-118 - Planning Commission from City Code</li> <li>• City of Falcon Heights Planning Commission Standing Rules</li> <li>• Sikkink's Seven Motion System</li> </ul>
<b>Action(s) Requested</b>	Staff recommends approval of the standing rules for 2025.

**Falcon Heights City Code**  
**Sec. 2-118. Planning commission.**

- (a) The commission shall be the city planning agency authorized by Minn. Stats. § 462.354, subd. 1.
- (b) The duties of the planning commission are:
  - (1) To guide future development of land, services, and facilities;
  - (2) To ensure a safe, pleasant and economical environment for residential, commercial, and public activities; and
  - (3) To promote the public health, safety, and general welfare of the community.
- (c) These duties are to be carried out by:
  - (1) Establishing community objectives and policy;
  - (2) Making recommendations to the council regarding petitions and applications for rezoning, special use permits, etc.;
  - (3) Reviewing and making recommendations on all matters relating to or affecting the physical development of the city.

(Code 1993, § 2-4.05; Ord. No. 98-02, § 3, 4-8-1998)



**FALCON HEIGHTS PLANNING COMMISSION**  
**PLANNING COMMISSION STANDING RULES**

**January 28, 2025**

**INTRODUCTION**

In the belief that the best decisions are made by the best informed decision makers and that the public decision process is best served when the public has every opportunity to present views, the following rules are established to govern regular and special commission meetings as well as formal public hearings. There are several goals behind these rules.

1. In general, free and open discussion by all interested parties should be an essential part of the decision making process.
2. The commission process should have as little procedural overhead as possible.
3. Time is better spent on substantial matters rather than proforma matters.

**MEMBERSHIP**

The formal commission membership consists of seven commissioners. All seven have one vote each and all can introduce motions. For purposes of leading the meeting, the chair, or in the absence of the chair, the vice-chair will be considered the chairperson. In the absence of the chair and vice-chair, the Commission shall name an acting chair for the duration of the meeting.

**RULES**

Agenda

1. To be considered, an item must be on the agenda and the agenda must be distributed to all the commission members and any other persons having responsibility for an item at least three working days prior to the meeting. Distribution may be made by electronic media, including the city website. An agenda can be modified with addenda by a majority vote but this should be used only for minor items or items with extreme time constraints.
2. Since there will be audience and possibly cable TV viewers not familiar with each item, the chair, or person appointed by the chair, will give a brief explanation of each item as it is addressed.
3. The order of items on the agenda need not be followed absolutely. The chair may adjust the order in the interest of:
  - a. Filling in time before a scheduled item, i.e., a public hearing.

- b. Grouping several items to best make use of consultant time.
- c. Accommodating individuals who have attended the meeting specifically to provide input on an item.

#### Process - Regular and Special Planning Commission Meetings

1. For these proceedings the commission will use the 'open discussion' procedure. That is, discussion is open to any member before or after a motion is made. This privilege is also extended to the Staff Liaison and any of the consultants who may have an interest in or can contribute to the item at hand.
2. At the discretion of the chair, this privilege is also extended to those members of the audience who wish to provide input. The chair may also rule out of order any input felt to be redundant, superfluous or irrelevant.
3. The chair can make liberal use of the "unanimous consent" procedure. That is, items that in the judgment of the chair are likely to be unanimously approved, can be introduced for approval with the statement "If there are no objections, ... stands approved (or denied)." If any commissioner has an objection, then the item reverts to the standard motion procedure. This "unanimous consent" procedure cannot be used for items requiring formal votes, i.e. resolutions.
4. The standard motion procedure is changed to not require a second. A motion need only be made to be considered. This also applies to amendments.
5. To eliminate confusion, only one amendment will be considered at a time and that amendment must be germane to the motion. An amendment cannot itself be amended. If a change to an amendment is deemed appropriate, the amendment should be withdrawn and reintroduced accordingly.
6. The general mode of voting will be by acclamation but with enough clarity that the individual votes can be recorded in the minutes. If in doubt, the secretary can request a clarification.
7. If the commission action is the result of a resident request and that request is denied in whole or in part, reasons of fact supporting the denial will be made part of the public record.
8. No commission meeting will extend beyond 10:00 P.M. except by unanimous vote. This rule is not subject to the modification or suspension provisions of the Standing Rules.

#### Process - Public Hearings

Since a public hearing is a more formal procedure and often requires certain procedures and actions to be legal, the meeting rules are changed accordingly.

1. The primary aim of a public hearing is to take input from the public. To accomplish this in the most effective manner the chair will introduce the hearing with an explanation of the issues. This explanation will be given by the chair or a person designated by the chair. The use of explanatory visual aids is encouraged.
2. Following the explanation, input from the public will be taken. Prior to accepting input, though, the chair will state the areas where input will be appropriate, the maximum time of FIVE MINUTES to be allotted to any individual presenter and any other procedural rules deemed appropriate to guarantee that all concerned parties have a fair and adequate opportunity to be heard.
3. At the discretion of the chair, all individuals wishing to speak must fill out and submit an identification form and speak into a recording microphone. Individuals not wishing to speak in public may provide a written statement. The commission may take up to 15 minutes to review written statements presented at the meeting. If the commission decides to not act on the issue at the public hearing meeting, it may by majority vote extend the time where written input will be taken to a day no later than 1 week before the next meeting where a deciding vote is planned.
4. All speakers are expected to be business-like, to-the-point and courteous. Anyone not abiding by these rules will be considered out-of-order.
5. The commission will refrain from initiating a discussion during the public input phase of the hearing except to clarify points brought up. These 'point of information' requests should be held to a minimum.
6. Once the public testimony phase is complete the chair will announce the public hearing to be closed and the commission will revert back to its open discussion mode of operation. From this point on, public input will only be appropriate when solicited by the commission.
7. Voting on any motion that results from a public hearing must be by roll call.
8. It shall be the intent of the commission to vote on the issue at the same meeting as the public hearing and as close in time to the public hearing as possible. Should it be necessary to defer voting until a later date, that procedure will be clearly explained to the audience.
9. No public hearing will extend beyond 9:30 p.m.
10. If the motion contains conditions, as may occur in conditional use or variance requests, those

conditions will be conveyed in writing to the requestor.

11. If the public hearing is the result of a resident request and that request is denied in whole or in part, reasons of fact supporting the denial will be made part of the public record.

#### ADOPTION/MODIFICATION/SUSPENSION

These rules, with the exception of the mandatory 10:00 P.M. adjournment, can be adopted, modified or suspended in whole or in part by a 3/4 vote of the commission. If suspended, they are automatically reinstated at the next meeting. Should they be suspended or a situation occurs that is not covered by the standing rules, Sikkink's Seven Motion System (attached) will apply.

#### ANNUAL REVIEW

These rules will be reviewed annually in January.

#### INTERPRETATION

The chair will interpret the rules. However, the chair's interpretation can be appealed by any commission member and can be overruled by a majority vote.

## SIKKINK'S SEVEN MOTION SYSTEM

### **General Rules for a Simplified System of Parliamentary Procedure**

1. The purpose of this decision making system is to allow efficient decision making that represents a majority position. Any motion, request, discussion or proposal, which seems to have as its purpose unreasonable delay, manipulation, or the goal of serving individual ends rather than group ends, can be ruled out of order by the chair. Such a ruling by the chair will be subject to the motion called appeal.
2. Free and open discussions are valued in this decision making system. For that reason, most motions are discussable and the motion to restrict discussion requires a 2/3 vote in order to pass. In recognizing persons for discussion, the chair first recognizes the person who made the motion, next recognizes other persons and always recognizes a person who has not spoken over a person who has already participated in the discussion. As far as possible, the chair should try to alternately recognize persons representing different viewpoints.
3. In examining the chart on the following page, you will note that five of the seven motions are amendable. However, only one amendment at a time may be considered. As soon as that amendment is passed or defeated, another amendment may be proposed.
4. The number in front of the motion listed indicates the rank of each motion. Thus, #1 – General motions are lowest in rank, and #7 – Restrict Debate motions are highest in rank. Two rules apply:
  - (1) You usually cannot consider two motions of the same rank at the same time, and
  - (2) If a motion of one rank is being considered, a motion of the same rank or lower rank is usually out of order, but a motion of higher rank is in order.

While these rules generally apply, the chair may allow some flexibility in certain circumstances. These situations almost always occur with motions #5, 6 and 7. For example, if #7 - "Restrict Discussion" is being discussed and a member wants a secret ballot vote on the matter, Request, while lower in rank, could be used to accomplish this purpose. The chair is allowed to make all decisions on exceptions, but all such decisions are subject to appeal.

Type of Motion/Rank	Purpose	Applies To What Situations	Needs Recognition	Needs Second	Can Be Discussed	Amendable	Vote Required
7. Restrict Discussion (highest rank)	To stop or limit discussion	All discussable motions	Yes	Yes	Yes	Yes	2/3
6. Appeal	To let the group vote on a chair's decision	To decision of the chairperson	No	Yes	Yes	No	Majority
5. Request	Not a motion but a way to question, challenge, or seek help	Any appropriate situation	No	No	No	No	Chair decides subject to appeal
4. Postpone	To delay action on any general motion to a future time	General motions	Yes	Yes	Yes	Yes	Majority
3. Refer	To have a general motion studied by a committee	General motions	Yes	Yes	Yes	Yes	Majority
2. Meeting Termination	To recess during a meeting or to end a meeting	Made to recess or adjourn	Yes	Yes	Yes	Yes	Majority
1. General (lowest rank)	To bring up business for majority decisions by the group	For doing business	Yes	Yes	Yes	Yes	Majority



## ITEM FOR DISCUSSION

<b>Meeting Date</b>	January 28, 2025
<b>Agenda Item</b>	F3
<b>Attachment</b>	2025 Planning Commission Schedule
<b>Submitted By</b>	Hannah Lynch, Community Development Coordinator / Planner

<b>Item</b>	Review of 2025 Planning Commission Schedule
<b>Description</b>	City Staff created a Planning Schedule to lay out the timeline for Planning Commission and City Council hearings for projects. This schedule will be used for all planning applications that require a public hearing, such as variances, conditional use permits, and code amendments.
<b>Budget Impact</b>	None
<b>Attachment(s)</b>	2025 Planning Commission Schedule
<b>Action(s) Requested</b>	No action necessary.

**City of Falcon Heights  
2025 Planning Commission Schedule**

<b>Planning Commission Meeting Date (4th Tuesday of the Month)</b>	<b>Planning Application Due (22 days prior, Monday, by 4:30 PM)</b>	<b>Legal Notice Newspaper Submission Deadline (12 days prior, Thursday)</b>	<b>Notice of Public Hearing Mailed (12 days prior, Thursday)</b>	<b>Legal Notice Newspaper Publication (10 days prior, Saturday)</b>	<b>City Council Review (2nd Wednesday of next month)</b>
January 28, 2025	January 6, 2025	January 16, 2025	January 16, 2025	January 18, 2025	February 12, 2025
February 25, 2025	February 3, 2025	February 13, 2025	February 13, 2025	February 15, 2025	March 12, 2025
March 25, 2025	March 3, 2025	March 13, 2025	March 13, 2025	March 15, 2025	April 9, 2025
April 22, 2025	March 31, 2025	April 10, 2025	April 10, 2025	April 12, 2025	May 14, 2025
May 27, 2025	May 5, 2025	May 15, 2025	May 15, 2025	May 17, 2025	June 11, 2025
June 24, 2025	June 2, 2025	June 12, 2025	June 12, 2025	June 14, 2025	July 9, 2025
July 22, 2025	June 30, 2025	July 10, 2025	July 10, 2025	July 12, 2025	August 13, 2025
August 26, 2025	August 4, 2025	August 14, 2025	August 14, 2025	August 16, 2025	September 10, 2025
September 23, 2025	September 1, 2025	September 11, 2025	September 11, 2025	September 13, 2025	October 8, 2025
October 28, 2025	October 6, 2025	October 16, 2025	October 16, 2025	October 18, 2025	November 12, 2025
November 25, 2025	November 3, 2025	November 13, 2025	November 13, 2025	November 15, 2025	December 10, 2025
December 23, 2025	December 1, 2025	December 11, 2025	December 11, 2025	December 13, 2025	<b>January 14, 2026</b>
<b>January 27, 2026</b>	<b>January 5, 2026</b>	<b>January 15, 2026</b>	<b>January 15, 2026</b>	<b>January 17, 2026</b>	<b>February 11, 2026</b>

\*\*If the planning application deadline falls on a holiday, the deadline will move to 4:30 PM on the next working day.





## ITEM FOR DISCUSSION

<b>Meeting Date</b>	January 28, 2025
<b>Agenda Item</b>	F4
<b>Attachment</b>	See below.
<b>Submitted By</b>	Hannah Lynch, Community Development Coordinator / Planner

<b>Item</b>	Variance Request – 1375 Larpenteur Ave W.
<b>Description</b>	<p>John Radimecky, homeowner of 1375 Larpenteur Ave W., contacted City Hall about constructing a new 3-stall garage to replace the existing 3-stall garage on the property. The orientation of the new garage will require the driveway to move to the west side of the property. The new construction will reduce the current impervious surface coverage, but the coverage amount will still be over the amount permitted by City Code by <b>760 square feet</b>. The variance request is to allow the construction of the new garage and driveway with the impervious surface greater than what is permitted by City Code.</p> <hr/> <p><b><u>Variances in the City of Falcon Heights</u></b>  <i>Sec. 113-62 – Variances</i></p> <p>(a) <i>Definitions.</i> The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:</p> <p style="padding-left: 40px;"><i>Practical difficulties</i> means the same as that term defined in Minn. Stats. § 462.357, as may be amended, meaning that the property owner proposes to use the property in a reasonable manner not permitted by this chapter, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and a variance, if granted, shall not alter the character of the locality. Economic considerations alone shall not constitute practical difficulties. Practical difficulties include but are not limited to inadequate access to direct sunlight for solar energy systems.</p> <p style="padding-left: 40px;"><i>Variance</i> means a modification of or variation from the provisions of this chapter consistent with the state enabling statute for municipalities, as applied to a specific property and granted pursuant to the standards and procedures of this chapter.</p> <p>(b) <i>Purpose.</i> The purpose of this division is to provide the procedure and criteria for variances.</p>

(c) *Application.*

- (1) Any owner of property or a person holding a contract to purchase property, or an optionee holding an option conditioned solely on the grant of a variance, or the duly authorized agent of such appellant, may make application for a variance. The application shall be made on forms prepared by the zoning administrator.
- (2) The application shall contain the legal description of the property, the zoning district in which it is located, a brief statement of the reasons the variance is requested, a statement of the ownership interest therein of the applicant and the names and addresses of the owners of all abutting property as listed on the current real estate tax rolls. The application shall be verified.

(d) *Use variances prohibited.* Variances may not be approved for a use that is not allowed in the zoning district where the property is located.

(e) *Review criteria.* The city council shall not approve any variance request unless they find that failure to grant the variance will result in practical difficulties on the applicant, and, as may be applicable, all of the following criteria have been met:

- (1) The variance would be in harmony with the general purposes and intent of this chapter.
- (2) The variance would be consistent with the comprehensive plan.
- (3) That, there are practical difficulties in complying with this chapter.
- (4) That the granting of the variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety.
- (5) That the requested variance is the minimum action required to eliminate the practical difficulties.
- (6) Variances shall be granted for earth sheltered construction as defined in Minn. Stats. § 216C.06, subd. 14, when in harmony with this chapter. Variances may be approved for the temporary use of a one-family dwelling as a two-family dwelling.

(f) *Conditions.* The city may attach conditions to the grant of the variance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

(g) *Procedure.*

- (1) All applications for variances shall be referred to the planning commission for study and recommendation to the city council.

(2) Within 60 days, the planning commission shall forward its recommendations to the city council; if no recommendation is transmitted within 60 days after referral of the application for variance to the planning commission, the city council may take action without further awaiting such recommendation.

(3) Variances are granted or denied by motion of the city council.

(h) *Termination.* The violation of any condition of the variance shall be the basis for the city council, following a hearing, to terminate the variance. If the property is not used or improvements substantially begun within a period of one year after the decision granting the variance, unless the variance decision provides otherwise, the variance shall be terminated. Unless the city council specifically approves a different time when action is officially taken on the request, approvals which have been issued under the provisions of this section shall expire without further action by the planning commission or the city council, unless the applicant commences the authorized use or improvement within one year of the date the variance is issued; or, unless before the expiration of the one-year period, the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as established by city council. The request for extension shall state facts showing a good faith attempt to complete or utilize the approval permitted in the variance. A request for an extension not exceeding one year shall be subject to the review and approval of the zoning administrator. Should a second extension of time, or any extension of time longer than one year, be requested by the applicant, it shall be presented to the planning commission for a recommendation and to the city council for a decision.

**Variance Request**

**The Property:**

1375 Larpenteur Ave W.

0.249 acres (10,846.44 sq. ft.)

Zoned R-1

Permitted Impervious Surface: **3,320 sq. ft.** or 30%, whichever is greater

Current Impervious Surface Coverage: 4,200 sq. ft.

Proposed Impervious Surface Coverage: 4,080 sq. ft.

**Improvement of 120 sq. ft, but still over by 760 sq. ft.**

**Answers to the following questions (applicant's answers italicized):**

- 1. In your opinion, is the variance in harmony with the purposes and intent of the zoning ordinance? Why or why not? *My request for a***

*variance does align with the spirit of the zoning. I will be reducing the impervious square footage of the property for reduced demand on storm drains, while: A. improving the buildings, B. improving driveway access, C. Increasing value and appearance.*

- 2. In your opinion, is the variance consistent with the comprehensive plan? Why or why not?** *This variance would be consistent with the overall plan because it reduces the demand on storm sewers at present (less impervious square footage) while accomplishing my goals and maintaining or modernizing the structures. We modified the plan to allow for a 5' driveway setback even though the properties around me do not meet this requirement.*
- 3. In your opinion, does the proposal put property to use in a reasonable manner? Why or why not?** *Yes, this is reasonable use of the property. Without the driveway change, access into the new garage would not be reasonable, in fact it would be quite difficult if not impossible. Without the change and variance, I would remain at my current, higher, hard surface (impervious) square footage with a dilapidated garage.*
- 4. In your opinion, are there circumstances unique to the property? Why or why not?** *Yes and no. In one sense no, my property is not unique, as the properties around me all have structures and driveways right on the property line and spacing is tight such that my neighbors would not be allowed to even rebuild garages or driveways without variances. They would need even more permissive variances in those cases. I am unique in that I modified my plan to meet the 5' driveway setback because I have a larger lot. I am requesting a variance in the total impervious square footage for all the reasons listed plus I have that larger lot which can handle a slight overage on hard surface yet maintain a percentage of hard surface consistent with smaller lots in the city.*
- 5. In your opinion, will the variance maintain the essential character of the locality? Why or why not?** *The variance will preserve the character of the property. It will have a modern, 3-car garage to replace an old (1937) 3-car garage in poor condition. A narrow, dilapidated driveway that's on the property line will be replaced with modern asphalt with up-to-date setbacks. The roofline of the garage and addition will be consistent with the house and reasonable steps will be taken to make the new garage/addition look like it belongs with the house.*

### **City Planner Analysis**

A variance may be granted to an applicant if the strict application of the zoning ordinance would cause "practical difficulties" for the property owner. There is a three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance and the terms of the variance are consistent with the comprehensive plan.

### **Three-Factor Test:**

1. **Reasonableness** – This means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. As the property owner is trying to build a new garage to replace a failing garage, this is a reasonable use of the property.
2. **Uniqueness** – This means that the landowner’s problem is due to circumstances unique to the property and not caused by the landowner. The properties in the northeast quadrant of the City of Falcon Heights tend to sit on long, narrow lots. They are larger lots, but they are generally situated in a way that makes it difficult, if not impossible, to have an attached garage to the side of the home. Due to this, there end up being long driveways to garages in the rear of the home that make up for a lot of the permitted impervious surface. While this is not particularly unique to this property by itself, it does present a unique challenge compared to homes outside of the northeast quadrant. Additionally, this is not an issue created by the property owner. Conversely, the property owner is trying to improve on the issue by decreasing the amount of impervious surface. The property is already non-compliant due to improvements made prior to the zoning ordinance.
3. **Essential character** – This means that, if granted, the issuance of the variance will not alter the essential character of the locality. As this variance would be decreasing the impervious surface coverage, bringing the entire property closer to compliance with the zoning ordinance, it would not alter the essential character of the area. It would bring it more in line with the character of the area and help with stormwater runoff.

### **Other Factors:**

1. **Is the variance in harmony with the general purposes and intent of the ordinance?** There are a total of 19 purposes and intents listed out in the zoning ordinance. The two that are applicable here include: 1) Prevent environmental pollution; and 2) Provide for the gradual elimination of those uses of land, buildings, structures, and improvements, and of those buildings, structures, and improvements, which do not conform to the standards for the areas in which they are located and which may adversely affect the development and the value of property in such area. This variance request, which still a variance for the impervious surface requirement in the zoning ordinance, is decreasing the amount of impervious surface overall on the property. Regarding environmental pollution, this will allow for better absorption of rainwater on the property without picking up potential pollutants from running over impervious surface. While it may be a small decrease in the existing amount of impervious surface, every bit of that helps. Additionally, this is bringing the property more into compliance with the zoning ordinance. In general, nonconforming uses may not be expanded upon. They may be continued or decreased but should still try to conform with the ordinance. Because this includes removing a building and adding a new one, it cannot be administratively approved as a continuation of a nonconforming use. In general

	<p><i>however, if a nonconforming use is not being expanded or intensified, it would be approved.</i></p> <p><b>2. Is the variance consistent with the comprehensive plan?</b> <i>The 2040 Comprehensive Plan spells out many different goals and action items for sustainability and land use. One of these goals is to encourage sustainability and resiliency practices that reduce energy consumption and carbon emissions, and mitigate the effects of severe weather and a changing climate. As mentioned previously, we are reducing the amount of impervious surface which will help with stormwater control and mitigating the effects of severe weather. Another goal is to dissuade the use of asphalt to reduce the heat island effect and encourage the use of permeable pavement to reduce stormwater runoff. Again, this is a reduction in the impervious surface (asphalt) which will assist with reducing stormwater runoff.</i></p> <p>Ultimately, this variance request is reasonable and will not have an adverse effect on neighbors or the community as a whole. It is bringing a nonconforming property into greater compliance with the zoning ordinance and allowing for a new garage to replace a dilapidated structure. The property owner is also ensuring the new driveway meets the correct setback from the neighboring property, 5'. The largest potential "disruption" by this project isn't a part of the variance at all. Rather, it will be moving the curb cut for the driveway. This part of this project is outside of the City's jurisdictional responsibility, however, as Larpenteur Avenue is a county road. The property owner will need to work directly with Ramsey County to receive the appropriate permissions and information on removing the existing curb cut and adding a new one for the driveway.</p>
<b>Budget Impact</b>	None.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>- Variance application and site plan</li> <li>- Names and addresses of surrounding property owners (3 abutting)</li> <li>- Handout - Land Use Variances, League of Minnesota Cities</li> </ul>
<b>Action(s) Requested</b>	Staff requests Planning Commission discuss and recommend approval or denial of the variance to City Council. City Council will make final decision at February 12, 2025 meeting.



# City of Falcon Heights Planning Application

FOR INTERNAL USE:  
Date received: 1/8/25  
Receipt: 038025

### Action Requested By:

Name of Property Owner John Radimecky jr@radimecky@proton.me **PAID**  
Phone (h/c) 612.812.9357 (w) \_\_\_\_\_  
Address of Property Owner 1375 Larpenteur Ave W  
Name of Applicant (if different) \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_

**RECEIVED**  
JAN 08 2025  
By EJ

### Property Involved:

Address 1375 Larpenteur Ave W, Falcon Heights, MN 55113  
Legal Description Brief description from Ramsey:  
LARPENTEUR VILLAS W 63 FT OF E 96 FT OF LOTS 10 AND LOT 11

Property Identification Number (PIN) 152923340024

### Present Use of Property (check one):

- Single Family Dwelling
- Duplex/Two Family Dwelling
- Multi Family Complex
- Business/Commercial
- Government/Institutional
- Vacant Land

### Action Requested (NON-REFUNDABLE):

- Variance (\$500.00)
- Conditional Use Permit (\$500.00)
- Rezoning, Zoning Amendment (\$500.00)
- Comprehensive Plan Amendment (\$550.00)
- Lot Split (\$250.00)
- Site Plan Review (\$100.00)
- Subdivision (Fee on request)
- Other (Please Specify) \_\_\_\_\_

*The above Application Fees do not include any additional fees that might be required, including legal, engineering, consulting and additional City services. Applicants should meet with City Staff prior to submitting application to discuss applicable ordinances, required attachments, timelines and fees. Credit card charges will incur a 3.1% + \$0.30 convenience fee.*

### Brief Summary of Request (applicant may submit letter with details of request):

Want to build new 3-stall garage to replace failing current 3-stall garage. New orientation requires relocation of driveway to west side of property. New construction will reduce the current impervious square footage but will still be over code by 380 sf on a larger lot. Requesting a variance.

*I certify that all statements on this application are true and correct:* 760 - new plan rec'd to correct setback - 480

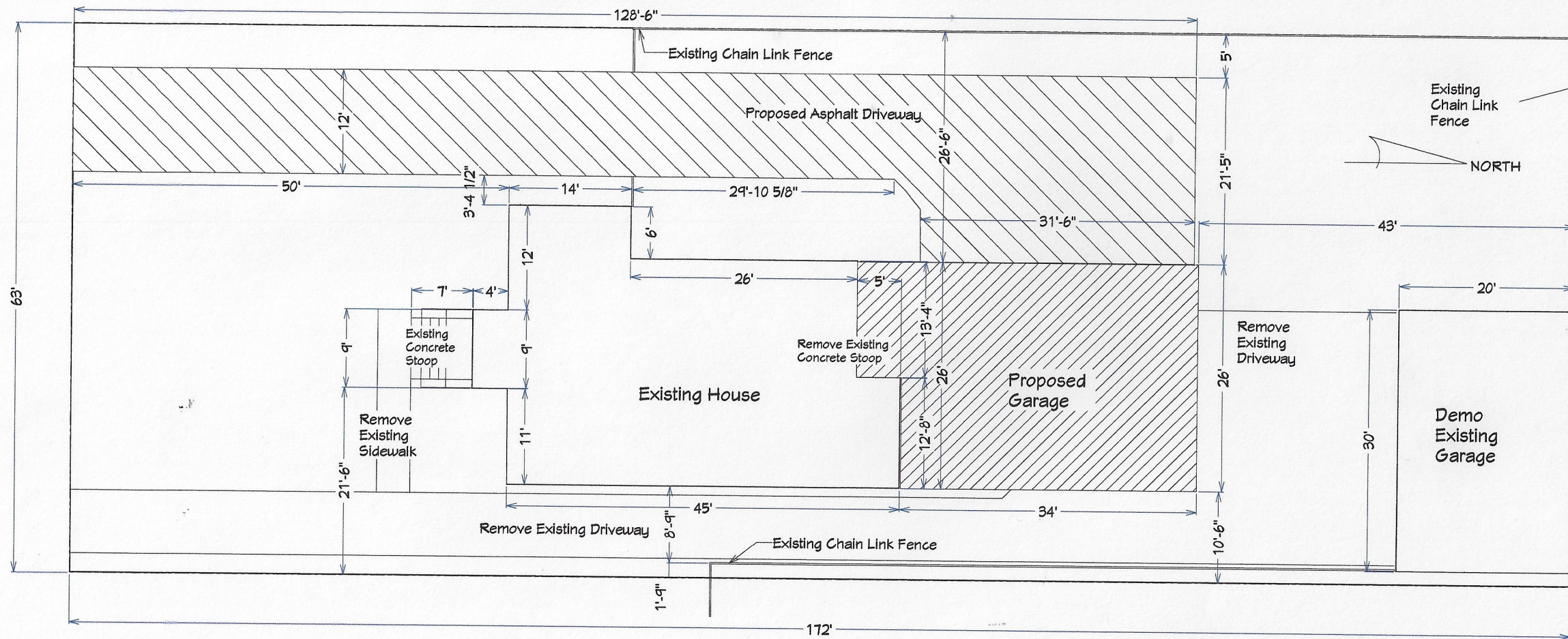
[Signature]  
Signature of Property Owner (required)

\_\_\_\_\_  
Signature of Applicant (if applicable)

Date: 31 Dec 2024

Date: \_\_\_\_\_

Planning Commission meeting: 1/28/25 City Council meeting: 2/12/25 Approved \_\_\_ Denied \_\_\_



**Site PLAN**  
1" = 15'-0"

Lot Size 10,836 SF  
 Existing House 1,224 SF  
 Existing Conc. Stoop 64 SF  
 Proposed Garage 951 SF  
 Proposed Driveway 1,841 SF  
 Total Impervious 4,080 SF  
 Existing Impervious 4,200SF

**Radimecky Residence**  
 1375 Larper Ave. West  
 Falcon Heights, MN

**ROSSBACH CONSTRUCTION**  
 2578 7th Ave. East North St. Paul, MN

DATE:  
1/8/2025

SHEET:



<b>OwnerName1</b>	<b>OwnerName2</b>	<b>OwnerAddress1</b>	<b>OwnerAddress2</b>	<b>OwnerCityStateZIP</b>
JOHN C RADIMECKY		1375 LARPENDEUR AVE W		FALCON HEIGHTS MN 55113-6302
ERIN LOREE FLATHMANN	REED AARON FLATHMANN	1381 LARPENDEUR AVE W		ROSEVILLE MN 55113-6302
LAZAROS CHRISTOFORIDES	SUSAN E ATCHLEY	1371 LARPENDEUR AVE W		FALCON HEIGHTS MN 55113-6302
ELIZABETH ANDERSON	JACOB ANDERSON	1700 ALBERT ST N		FALCON HEIGHTS MN 55113-6202

# Land Use Variances

Published: May 21, 2021

*See accompanying model documents below.*

*This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.*

## What is a variance?

A variance is a way that cities may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner seeks a variance to allow a use of their property that is not permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota. State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located ([Minn. Stat. § 462.357, subd. 6](#)).

## Granting a variance

Minnesota law provides for a body called the board of adjustment and appeals to hear requests for variances ([Minn. Stat. § 462.357, subd. 6](#)). In many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A city may grant a variance if enforcement of a zoning ordinance provision, as applied to a particular piece of property, would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when:

- They are in harmony with the general purposes and intent of the ordinance, and
- The terms of the variance are consistent with the comprehensive plan.

## Legal standards

When considering a variance application, a city exercises “quasi-judicial” authority. This means the city acts like a judge in evaluating the facts against the legal standard. The city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. If the applicant meets the standard, then the city may grant the variance.

In contrast, when the city writes the rules in the zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

## Practical difficulties

“Practical difficulties” is a legal standard that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

### Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner.

This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance.

It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

### Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner.

The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

### Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality.

Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

## Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law ([2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6](#)).

The 2011 law restored municipal variance authority in response to a Minnesota Supreme Court case ([Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010)). The law now does both of the following:

- Provides consistent statutory language between city land use planning statutes ([Stat. § 462.357, subd. 6](#)) and county variance authority ([Minn. Stat. § 394.27, subd. 7](#)).

- Clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of

- reasonableness
- uniqueness
- essential character

The League has developed models that reflect current variance law. Your city attorney should review these models with you prior to council action to tailor them for your city’s needs.

- [View the League model ordinance on issuance of a zoning variance \(doc\).](#)
- [View the League model variance application form \(doc\).](#)
- [View the League model resolution adopting findings of fact \(doc\).](#)

## Other considerations

### Harmony with other land use controls

State law says, “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan” ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

For more about findings of fact, see [Taking the Mystery out of Findings of Fact](#)

### Economic factors

Sometimes landowners insist they deserve a variance because they have already incurred substantial cost. They may also argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). Rather, practical difficulties exist only when the three statutory factors are met.

### Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request.

While city officials may feel their decision should reflect the overall will of the residents, their task is limited to evaluating how the variance application meets the statutory practical difficulties factors.

Residents can often provide important facts to help the city address these factors, but unsubstantiated opinions and reactions to a request are not a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, it could be overturned by a court if challenged.

## Conditions

A city may impose conditions when it grants a variance. Conditions must be directly related to and bear a rough proportionality to the impact created by the variance ([Minn. Stat. § 462.357, subd. 6](#)). For instance, if a variance is granted to exceed a height limit, any conditions attached should presumably relate to lessening the effect of excess height.

## Variance procedural issues

### Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied. Many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

### Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not bound by decisions made for prior variance requests. If a city finds it is issuing many variances to a particular zoning standard, the city should consider amending the ordinance to change the standard.

### Time limit

A written request for a variance is subject to Minnesota's 60-day rule. It must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval ([Minn. Stat. § 15.99](#)).

## Documentation

Whatever its decision, a city should create a record that supports it.

If denying the variance, the 60-day rule requires the reasons for the denial be put in writing within the statutory time period ([Minn. Stat. § 15.99, subd. 2](#)). Even if the variance is approved, a written statement explaining the decision is advisable.

The written statement should address each of the three practical difficulties factors and list the relevant facts and conclusions for each factor.

[For more about findings of fact, see \*Taking the Mystery out of Findings of Fact\*](#)

## Variances once granted

A variance is a property right that "runs with the land." That is, it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county

recorder. Even if the property is sold to another person, the variance applies.

**Models used in this discussion:**

- [Issuance of Variances](#), LMC model ordinance (doc)
  - [Variance Application](#), LMC model form (doc)
  - [Adopting Findings of Fact](#), LMC model resolution (doc)
- 

Your LMC Resource

Jed Burkett

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