



MAYOR AND COUNCIL COMMUNICATION

DATE: 11/15/2016

CONSENT

ITEM #:17

AGENDA ITEM: Zoning Text Amendment – Variance Ordinance
SUBMITTED BY: Stephen Wensman, Planning Director
THROUGH: Kristina Handt, City Administrator
REVIEWED BY: Emily Becker, City Planner
Sarah Sonsalla, City Attorney

BACKGROUND:

The City is requesting a zoning text amendment to amend the Variance Ordinance, Section 154.109, as it pertains to expirations of variances. A recent review of a land use application by the City Attorney resulted in a determination that a portion of the ordinance that pertains to expiration of variances may not comply with MN State Statutes. The City Attorney drafted the proposed ordinance that:

- 1) strikes the problematic language, and
- 2) adds a provision for administrative extensions of variances for variances not utilized within 12 months after an approval.

The City has discretionary authority when it comes to extending variance when not utilized. The purpose of the second part of the amendment is to eliminate the need for an applicant to reapply for a variance with its associated costs and to reduce staff time associated with such applications when extensions are for a limited time, one year or less. If greater than a year, then the Planning Commission and Council review would be required.

ISSUE BEFORE COUNCIL:

The council, as part of the consent agenda, is respectfully being asked to consider the zoning text amendment as it pertains to expiration of variances.

PROPOSAL DETAILS/ANALYSIS:

The City Attorney has reviewed our current variance ordinance and has drafted this ordinance as a result striking the inappropriate text and subsequently added the section on administrative extensions which is allowed under MN State Statutes.

FISCAL IMPACT:

The Administrative extensions will result in less expense for the applicants and less staff time and resources processing those applications.

OPTIONS:

The City Council may approve the zoning text amendment as part of tonight’s consent agenda, or remove the item from the consent agenda to discuss then approve the ordinance amendment unchanged, approve the ordinance amendment with changes, or deny the ordinance amendment.

PUBLIC HEARING:

The Planning Commission held a public hearing on 10/24/16 to consider the zoning text amendment. There were no comments from the public. The Planning Commission approved the amendment 7-0.

RECOMMENDATION:

Staff and the Planning Commission respectfully recommend the City Council approve the zoning text amendment as it pertains to expiration of variances as part of tonight’s consent agenda by approving Ordinance 08-158.

If the item is removed from the consent agenda, then the following motion is recommended:

“Move to approve Ordinance 08-158 approving a zoning text amendment as it pertains to expiration of variances, Section 154.109, Subd. I.”

Also,

“Move to approve Resolution 2016-98 approving the summary publication of the zoning text amendment as it pertains to expiration of variances, Section 154.109, Subd. I.”

ATTACHMENTS:

- Ordinance 08-158 as it pertains to expiration of variances, Section 154.109, Subd. I
- Resolution 2016-98 approving the summary publication of the zoning text amendment as it pertains to expiration of variances, Section 154.109, Subd. I.

ATTACHMENTS:

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

ORDINANCE NO. 08-158

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES
REGARDING VARIANCE EXPIRATIONS**

SECTION 1. The City Council of the City of Lake Elmo hereby amends Section 154.109 of the City Code by deleting the ~~stricken~~ language and inserting the double-underlined language as follows:

ARTICLE III. ZONING ADMINISTRATION AND ENFORCEMENT

§ 154.109 VARIANCES.

- A. *In General.* The Board of Adjustment shall have the power to grant variances to the provisions of this chapter under the following procedures and standards.
 - 1. A request for a variance from the literal provisions of this chapter may be granted in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. All requests for variances shall be reviewed in accordance with the required findings listed in §154.109.F.
- B. *Use Variances Prohibited.* A variance shall not be granted for any use that is not a listed permitted or conditional use under this chapter for property in the zone where the property is located.
- C. *Application Requirements.* Variance applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
- D. *Hearing Requirements.* The Planning Commission shall hold a public hearing on each complete application for a variance as provided in §154.102 of this Article. After the close of the hearing on a proposed variance, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the Board of Adjustment.
- E. *Board of Adjustment Action.* The Board of Adjustment shall receive the recommendation of the Planning Commission and shall take final action on the variance request. All findings and decisions of the Board of Adjustments concerning variances shall be final.
- F. *Required Findings.* Any action taken by the Board of Adjustment to approve or deny a variance request shall include the following findings:
 - 1. *Practical Difficulties.* A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical

difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.

- a. *Definition of Practical Difficulties.* “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 an official control.
 2. *Unique Circumstances.* The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.
 3. *Character of Locality.* The proposed variance will not alter the essential character of the locality in which the property in question is located.
 - a. *Definition of Locality.* For purposes of this subsection, “locality” shall be defined as all that property within 350 feet of the property proposed for the variance; however, in all events, it shall include all parcels abutting the affected parcel, including those immediately across a public street, alley of other public property.
 4. *Adjacent Properties and Traffic.* The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.
- G. *Conditions.* The Planning Commission may recommend and the Board of Adjustment may impose such restrictions and conditions upon the property that is the subject of the variance as may be necessary to comply with the standards established by this chapter or to reduce or minimize the effect of such variance upon other properties in the neighborhood and to better carry out the intent of the variance.
- H. *Effect of Denial.* No application by a property owner for a variance shall be submitted to the Board of Adjustment within a six (6) months period following a denial of such a request unless, in the opinion of the Board, new evidence of change in circumstances warrant it.
- I. *Expiration.* A variance shall be deemed to authorize only one particular use and shall expire if work does not commence within twelve (12) months of the date of granting such variance ~~or if that use ceases for more than six (6) consecutive months, except when:~~
1. A written petition for an extension of one (1) year or less, is received at least 30 days prior to the expiration of the initial variance request; and
 2. The petition for the extension states facts demonstrating that a good faith attempt has been made to complete or utilize the variance that had been granted.
 3. The fee for such a petition shall be set by resolution of the City Council.
 4. The Planning Director shall review the petition to either approve or deny the extension. An appeal of a Planning Director’s decision shall follow the provisions set

forth in §154.108. Petitions for extension that are greater than one (1) year shall be presented to the planning commission for a recommendation and to the City Council for a decision.

J. *Revocation.* The Board of Adjustment may revoke a variance if any conditions established by the Board as part of granting the variance request are violated.

(Ord. 08-085, passed 7-2-2013)

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-158 was adopted on this _____ day of ____ 2016, by a vote of ___ Ayes and ___ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance ____ was published on the ____ day of _____, 2016.

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

RESOLUTION NO. 2016-98

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-158 BY TITLE
AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-158, an ordinance to amend Article III. Zoning Administration and Enforcement, Section 154.109: Variances of the City Code; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-158 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-158, which amends the Chapter 154: Zoning Code:

- 1) strikes language that conflicts with MN State Statutes, and
- 2) adds a provision for administrative extensions of variances for variances not utilized within 12 months after an approval.

The full text of Ordinance No. 08-158 is available for inspection at Lake Elmo city hall during regular business hours.

BE IT FURTHER RESOLVED by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: November 15, 2016

Mayor Mike Pearson

ATTEST:

Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member
_____ and upon vote being taken thereon, the following voted in favor

thereof: _____ and the following voted against

same: _____

Whereupon said resolution was declared duly passed and adopted.



PLANNING COMMISSION
DATE: 10/10/16
AGENDA ITEM: 4D PUBLIC HEARING
CASE # 2016-43

ITEM: Zoning Text Amendment – Variance Ordinance Amendment

SUBMITTED BY: Stephen Wensman, Planning Director

REVIEWED BY: Emily Becker, City Planner
Kristina Handt, City Administrator
Sarah Sonsalla, City Attorney

SUMMARY AND ACTION REQUESTED:

City Staff is requesting the Planning Commission consider a zoning text amendment to the City of Lake Elmo Code of Ordinances, Section 154.109 as it pertains to expirations of variances. Staff is recommending that Planning Commission recommend approval of the zoning text amendment.

REVIEW:

A review of a recent variance extension request by the City Attorney has resulted in a suggestion to amend the expiration section of the variance ordinance, Section 154.109, Subd. I. The requested changes are two-fold.

First, the City Attorney believes the expiration of a variance for if a use ceases for more than six (6) consecutive months is of questionable legality because variances run with the land and therefore, should not be taken away for nonuse. The City Attorney recommends this clause be stricken from the ordinance.

Second, Staff is recommending administrative extensions of variances for variances not initiated within twelve (12) months of an approval as long as the petition for extension is made in writing, the requested extension is for a year or less and that it is received at least 30 days prior to expiration, and that the applicant can demonstrate a good faith attempt to complete or utilize the variance. The suggested ordinance would allow Planning Director review and approval such requests and that appeals would follow existing code provisions identified in §154.108. Any petitions for an extension greater than one year would require the applicant to present the petition to the Planning Commission for recommendation to the City Council. The purpose of this second recommended amendment is to eliminate the need for an applicant to reapply for a variance with its associated application costs (application fee, certified address labels) and staff time preparing reports and holding public hearings as currently required, when requested extension are for a limited time, one year or less, or presented to the Planning Commission with recommendation to the City Council if for a period greater than a year without the need for a public hearing.

FINDINGS:

Staff is recommending approval of the zoning text amendment with the following suggested findings:

- The amendment has been reviewed by the City Attorney and is in conformance with Minnesota Statutes, Section 462.357, Subd. 6 as it pertains to variances.
- The administrative extension of variances of a year or less is appropriate if the applicant can demonstrate a good faith attempt to complete or utilize the variance is consistent with the spirit and intent of the ordinance.

RECOMENDATION:

Staff is recommending the Planning Commission recommend approval of the zoning text amendment amending City of Lake Elmo Code of Ordnances, Section 154.109 as it pertains to expirations of variances with the following motion:

“Move to recommend the City Council approval Ordinance 08-__ amending City of Lake Elmo Code of Ordinances, Section 154.109 as it pertains to expirations of variances”

ATTACHMENTS:

- Minnesota Statutes, Section 462.357
- Comparison of other City’s Variance Ordinances
- Ordinance 08-__ amending City of Lake Elmo Code of Ordinances, Section 154.109 as it pertains to expirations of variances

ORDER OF BUSINESS:

- IntroductionPlanning Staff
- Report by StaffPlanning Staff
- Questions from the Commission Chair & Commission Members
- Open the Public HearingChair
- Close the public HearingChair
- Discussion by the Commission Chair & Commission Members