

# *City of Falcon Heights Planning Commission*

City Hall  
2077 W. Larpenteur Avenue

Tuesday, February 23, 2016  
7:00 p.m.

## **A G E N D A**

- A. CALL TO ORDER: 7:00 p.m.
- B. ROLL CALL:           Chair Schafer\_\_\_\_ Alexander \_\_\_\_  
                                  Murphy       \_\_\_\_ Bellemare \_\_\_\_  
                                  Williams     \_\_\_\_ Larkin       \_\_\_\_  
                                  Council Liaison Harris \_\_\_\_ Staff Liaison Moretto \_\_\_\_
- C. APPROVAL OF MINUTES for January 26, 2015
- D. AGENDA
  - 1. Review Draft Ordinance No. 16-XX - Building Heights
- E. INFORMATION AND ANNOUNCEMENTS
  - 1. There will be an after meeting Workshop - Variances
- F. ADJOURN
- G. WORKSHOP

*If you have a disability and need accommodation in order to attend this meeting, please notify City Hall 48 hours in advance between the hours of 8:00 a.m. and 4:30 p.m. at 651-792-7600. We will be happy to help.*

**City of Falcon Heights  
Planning Commission Minutes  
January 26, 2015**

**PRESENT:** Commissioners Murphy, Williams, Schafer, Larkin, Bellemare, Council Member Harris, Staff Liaison Moretto

**ABSENT:** Commissioners Alexander

The meeting was called to order at 7:15 p.m. by Chair Schafer.

**The minutes of the October 27<sup>th</sup>, 2015 meeting of the Planning Commission were approved.**

**AGENDA:**

**1. Selection of Chair, Vice-Chair, and Secretary**

It was unanimously decided that the Chair will be Commissioner Larkin; the Vice-Chair will be Commissioner Williams; and the Secretary will be Commissioner Bellemare.

**2. Approval of the Standing Rules – No Change**

The Standing Rules were unanimously approved.

**INFORMATION AND ANNOUNCEMENTS:**

**1. Prepare for Discussion on Current Interim Ordinances**

It was discussed that there will be agenda items in the months to follow to resolve current interim ordinances with ordinance amendments.

**Community Forum: None**

**ADJOURNMENT:** The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

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Paul Moretto  
Community Development Coordinator

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Emily Schafer  
Chair – Planning Commission

**ORDINANCE NO. 16-xx**  
**CITY OF FALCON HEIGHTS**  
**RAMSEY COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 113 OF  
THE CITY CODE CONCERNING BUILDING HEIGHT**

THE CITY COUNCIL OF FALCON HEIGHTS ORDAINS:

**SECTION 1.** Section 113-243 of the Falcon Heights City Code is amended by **REMOVING** and **CHANGING** the following:

***REMOVE - (a) Conditional use permit. Any structural height that exceeds this chapter must have a conditional use permit.***

***REMOVE – All references to “(a) Conditional use permit. Any structural height that exceeds this chapter must have a conditional use permit.” from THE CITY CODE of FALCON HEIGHTS.***

***CHANGE – FROM (b) Exemptions. TO (a) Exemptions***

***CHANGE – FROM (c) Airport TO (b) Airport***

**SECTION 3.** Effective Date. This ordinance shall take effect from and after its passage.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City Council of Falcon Heights, Minnesota.

CITY OF FALCON HEIGHTS

BY: \_\_\_\_\_  
Peter Lindstrom, Mayor

ATTEST:

\_\_\_\_\_  
Sack Thongvanh, City Administrator/Clerk



***The City That Soars!***

## REQUEST FOR PLANNING COMMISSION ACTION

<b>Meeting Date</b>	February 23, 2016
<b>Agenda Item</b>	Workshop 1
<b>Title</b>	Review of Variance Procedures (Workshop)
<b>Submitted By</b>	Paul Moretto, Staff Liaison

<b>Description</b>	Orientation for new commissioners and review for continuing commissioners on Commission actions that require a public hearing, especially variances.
<b>Background</b>	<p>The Planning Commission provides formal recommendations to the City Council on certain zoning matters and cases, including amendments to the zoning code, zoning changes, amendments to the Comprehensive Plan and variances.</p> <p>The procedures for all of these actions follow a similar pattern: (1) published notice of a public hearing, (2) public hearing before the Planning Commission, (3) Planning Commission vote on a recommendation, (4) City Council action.</p>
<b>Budget Impact</b>	None
<b>Attachment(s)</b>	•
<b>Action(s) Requested</b>	<p>None.</p> <p>Staff will conduct a brief review/training for commissioners on variance procedures. It is recommended that commissioners keep the attached documents for future reference.</p>

# Zoning and Variances: The Basics

Falcon Heights  
Planning Commission



# What is zoning?

## Why do we have it?

- Regulations that control the use of land within a jurisdiction. ([houseandhome.msn.com](http://houseandhome.msn.com))
- Local ordinances regulating the use and development of property by dividing the jurisdiction into land use districts or zones represented on a map and specifying the uses and development standards (e.g. maximum height of structures, minimum setbacks, minimum useable open space) within each zone ([www.aiapvc.org](http://www.aiapvc.org))

# What is zoning?

## Why do we have it?

- Authority is granted to cities by Minnesota Statute.
- Zoning was upheld by the U.S. Supreme Court in 1926
- The goal of zoning is to balance the common good with individual rights.

# What is a variance?

- In zoning, a variance is an administrative exception to land use regulations, generally in order to compensate for a deficiency in a real property which would prevent the property from complying with the zoning regulation. Variances are required in the United States in order to prevent a regulatory taking. (from wikipedia.org)



# Why do we grant variances?

- When strict enforcement of the code would cause practical difficulty because of circumstances unique to the individual property.
- When the unique circumstances were not created by the landowner.

# What factors does the Planning Commission look at?

- What are the unusual or unique characteristics of this property that make a variance necessary?
- What is the degree of hardship caused by not granting the variance?
- What is the impact on surrounding properties and on the health, safety and welfare of the Public?
- Is the proposed use reasonable in this zone and neighborhood?

# What factors does the Planning Commission look at?

- Does the owner have other reasonable options that are legal and do not require a variance?
- What is the least amount of variance that can accomplish the purpose?
- The burden is on the applicant to show that the variance is necessary.
- Economic considerations alone are not enough to constitute hardship.

# What factors does the Planning Commission look at?

- Neighborhood testimony about *facts* is acceptable, but support and/or opposition by neighbors is not enough to be the sole foundation of the decision.
- The standards are set by the Comprehensive Plan and the ordinances (City Code).  
***Everything is measured by this.***

# Falcon Heights Variance Cases, 1988 to 2006

Years	Number of Variance Cases <sup>1</sup>	Residential	Residential Approved	Non-residential <sup>2</sup>	Non-Res Approved
1988 - 1997	45	39	36	6	6
Approved	93.3%		92.3%		100%
1998 – 2006	15	10	8	5	3.5 <sup>3</sup>
Approved	76.1%		80%		70%

## Notes

1. Some cases included multiple variances.
2. Non-residential includes 2 non-profit; the rest were commercial.
3. Of 2 variances applied for, for Dino's in 2003, one was approved; the other was withdrawn. The 2005 variances for 1871 Larpenteur have expired and are void.

# Questions?

## *Contact:*

- Sack Thongvanh, City Administrator
- Paul Moretto, Community Development Coordinator

*City of Falcon Heights  
2077 W. Larpenteur Ave  
651-792-7600*



## INFORMATION MEMO

# Land Use Variances

*Learn about variances as a way cities may allow an exception to part of their zoning ordinance. Review who may grant a variance and how to follow and document the required legal standard of “practical difficulties” (before 2011 called “undue hardship”). Links to a sample ordinance and forms for use with this law.*

### RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

## I. What is a variance

A variance is a way that a city 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 will seek a variance to allow a particular use of their property that would otherwise not be 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.

## II. Granting a variance

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; 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 variance may be granted 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. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only 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.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

### **III. Legal standards**

When considering a variance application a city exercises so-called “quasi-judicial” authority. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

#### **A. Practical difficulties**

“Practical difficulties” is a legal standard set forth in law 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.

##### **1. 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.

##### **2. 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.



## RELEVANT LINKS:

[2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6.](#)

[Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010).

[Minn. Stat. § 462.357 subd. 6.](#)  
[Minn. Stat. § 394.27, subd. 7.](#)

See Section I, *What is a variance.*

See IV-A, *Harmony with other land use controls.*

### 3. 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.

### B. Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. After a long and contentious session working to restore city variance authority, the final version of HF 52 supported by the League and allies was passed unanimously by the Legislature. On May 5, Gov. Dayton signed the new law. It was effective on May 6, the day following the governor’s approval. Presumably it applies to pending applications, as the general rule is that cities are to apply the law at the time of the decision, rather than at the time of application.

The 2011 law restores municipal variance authority in response to a Minnesota Supreme Court case, *Krummenacher v. City of Minnetonka*. It also provides consistent statutory language between city land use planning statutes and county variance authority, and 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.

In *Krummenacher*, the Minnesota Supreme Court narrowly interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test is not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance. The new law changes that factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. Also included is a sentence new to city variance authority that was already in the county statutes.

## RELEVANT LINKS:

[LMC model ordinance.](#)

[LMC model variance application form.](#)

[LMC model resolution adopting findings of fact.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

See LMC information memo, *Taking the Mystery out of Findings of Fact.*

[Minn. Stat. § 462.357, subd. 6.](#)

## C. City ordinances

Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first. In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute.

The samples linked at the left reflect the 2011 variance legislation. While they may contain provisions that could serve as models in drafting your own documents, your city attorney would need to review prior to council action to tailor to your city's needs. Your city may have different ordinance requirements that need to be accommodated.

## IV. Other considerations

### A. Harmony with other land use controls

The 2011 law also provides that: "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." This is in addition to the three-factor practical difficulties test. So a city evaluating a variance application should make findings as to:

- Is the variance in *harmony with* the purposes and intent of the ordinance?
- Is the variance *consistent with the comprehensive plan*?
- Does the proposal put property to use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

### B. Economic factors

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the three statutory factors are met.

**RELEVANT LINKS:**

[Minn. Stat. § 462.357, subd. 6.](#)

## **C. 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, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

## **D. Conditions**

A city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

## **V. Variance procedural issues**

### **A. Public hearings**

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but 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.

### **B. 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 generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

## RELEVANT LINKS:

[Minn. Stat. § 15.99.](#)

[Minn. Stat. § 15.99, subd. 2.](#)

See LMC information memo,  
*Taking the Mystery out of  
Findings of Fact.*

[Minn. Stat. § 15.99, subd. 2.](#)

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### C. Time limit

A written request for a variance is subject to Minnesota's 60-day rule and 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 deemed an approval.

### D. Documentation

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

## VI. Variances once granted

A variance once issued is a property right that "runs with the land" so 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.

## VII. Further assistance

If you have questions about how your city should approach variances under this statute, you should discuss it with your city attorney. You may also contact League staff.

## INSTRUCTION FOR APPLICANTS REQUESTING A VARIANCE

### PURPOSE

The purpose of granting a “Variance” is to provide relief from the strict application of the provisions of the zoning code in **cases where such strict application would cause undue hardship**. Variances are intended to allow some relaxation in the application of the performance standards controlling such items as lot area, building location, height, and setback. They are not intended to either establish or enlarge a use which is not already permitted within the zoning district.

### CRITERIA

In order to grant a variance, the city shall consider the evidence presented to it by the applicant and must determine that the request does not violate the following criteria:

- a. The granting of the variance will not be detrimental to the public health, safety, or welfare;
- b. the conditions upon which the variance is based are unique to the property for which it is sought and are not generally applicable;
- c. the conditions which create the need for the variance are due to the particular shape, topography, or other natural characteristics of the land and are not due to actions taken by the applicant;
- d. the variance will not in any way adversely affect the purpose and the intent of the city's comprehensive guide plan or zoning code.

Additional standards are listed in Section 113-62 of the city's zoning code.

### PROCEDURE

#### Applicant Responsibility

1. The applicant should become familiar with the provisions set forth in Section 113-62 in the zoning code of the City of Falcon Heights.
2. The applicant will meet with the city staff to discuss his/her request. For this meeting, the applicant must prepare a site sketch plan showing the proposed change and including all relevant dimensions. Staff will work with property owners to avoid having variance requests submitted that do not meet the required criteria for granting a variance.
3. If no solution is found or if the property owner feels that a variance is the only amenable solution to him/her, then the owner/applicant must obtain the following information from staff:
  - a. An application form entitled “City of Falcon Heights Planning Application”.
  - b. Instruction sheet entitled “Procedure for Obtaining a Variance”.
4. The applicant submits one signed copy of the application to the city at least 21 calendar days prior to the date of the planning commission meeting at which time the applicant wishes his/her request considered. The application shall be accompanied by a non-refundable fee of ~~\$350.00~~ per variance and the following supportive documents:

- a. A location map of appropriate scale to show the site and surrounding vicinity and clearly indicate nearby street patterns, property lines, zoning boundaries, and other significant features that will have an impact on the variance being requested.
  - b. A sketch plan showing all pertinent dimensions having an influence upon the variance request.
  - c. A brief statement describing why the variance is being requested.
  - d. The names and addresses of the owners of all abutting properties and any other properties impacted by the applicant's request. These property owners will be notified of the applicant's request for a variance, and the date and time of the planning commission meeting at which the applicants request will be considered. (Available in Ramsey County Courthouse, Room 138, Taxation). The City may waive this requirement if the information is readily available through City data resources.
  - e. If topography or extreme grade is the basis on which the request is made, a topographic map showing all existing and proposed contours, at intervals of no greater than two feet, shall be submitted.
  - f. If the application involves such alteration to the site as to require the review of a certified engineer, the review must be made prior to the submission and the engineer's comments or recommendations must be included with the application. An example of such an alteration would be the relocation of an access drive which may result in either traffic movement conflicts, or may require the city to move a utility line or catch basin.
5. The Applicant should plan to attend to attend the public hearing on the variance and should remain in communication with staff to monitor the status of the application.
  6. If the variance is approved, a building permit must be obtained from the City before work may begin. Work must commence within one year after the variance is approved or the variance becomes void.

### **City Procedure**

1. Staff will review the application and determine whether it is valid and complete, including confirmation of the applicant's standing to submit a zoning application on the property.
2. If the application is valid and complete and the fees are paid, the application will be accepted and the public hearing before the Planning Commission will be scheduled such that final action by the Council can be completed within 60 days of the application's acceptance. If more time is required, the City may take 120 days, provided notice is given to the applicant.
3. Legal notice of the variance hearing will be posted at City Hall and in the City's official newspaper. Notice will also be mailed to all owners of property within 350 feet.
4. After the public hearing the Planning Commission makes a recommendation for approval or denial to the City Council, which votes final approval or denial. Council action generally takes place within 30 days of the Planning Commission recommendation.



## CITY OF FALCON HEIGHTS PROCEDURE FOR OBTAINING A VARIANCE

1. Property owner inquires about a construction project.
2. Staff provides information on the setbacks and other relevant information from the zoning code.
3. Property owner prepares a site plan with the proposed improvements.
4. Building Official and Planner review the site plan and help the property owner avoid a variance request if there is a reasonable solution without the request. Staff will work with property owners to avoid having variance requests submitted that do not meet the required criteria for granting a variance.
5. If no solution is found, or if the property owner feels that a variance is the only amenable solution to him/her, the property owner submits a written request for a variance, completes the variance application form, submits a site plan and other requested information, and pays a non-refundable ~~\$350.00~~ application fee.
6. If more than one variance is sought for a project, all may be included in the same request but ~~\$350.00~~ is due for **each** additional variance being requested.
7. Applications must be complete and paid at least 21 calendar days before the scheduled meeting of the Planning Commission in order for the variance hearing to be placed on the agenda and to allow for the required notifications and publication.
8. A public hearing before the Planning Commission is scheduled, and a legal notice of the hearing is posted and sent to the City's official newspaper.
9. Abutting property owners are notified by the city in writing of the variance request and public hearing, and comments are requested prior to or at the planning commission meeting.
10. The planning commission holds the public hearing, reviews the request and recommends approval or denial using staff information, and the criteria for approving a variance.
11. Under most cases, it is important for the applicant to be present at the planning commission meeting.
12. The city council approves or denies the variance request, considering the staff information, the criteria for approving a variance, and the planning commission's recommendation.
13. If the variance is approved, the applicant or his/her contractor must apply for a building permit and work must commence within one year of the date on which the variance was approved. Otherwise, the variance becomes void.



Year	VarType	Action	# Approved	# Denied	Approval %					
1998	Height/house	Approved	57	8	88%					
1998	Rear setback/attached garage	Approved								
1998	Corner side setback/house	Approved				<b>Types of Var</b>	<b>Garage</b>	<b>Fence</b>	<b>Height</b>	<b>Setback</b>
1989	Parking	Approved					21	10	10	39
1989	Front setback/ramp	Approved								
1990	Height/front & rear fence	Denied								
1990	Corner side setback/garage	Approved								
1990	Side setback/garage addition	Approved								
1990	Area/sign (replacement)	Approved								
1990	Rear setback/garage & Double driveway access	Approved								
1990	Corner side setback/garage	Approved								
1991	Height/rear yard fence	Approved								
1992	Side setback/ garage	Approved								
1992	Front setback/ garage	Approved								
1992	Area/porch & garage addition	Approved								
1992	Side setback/garage	Approved								
1992	Side setback/new home	Approved								
1992	Height/fence in rear yard	Approved								
1992	Number of signs	Approved								
1992	Side setback/garage	Approved								
1993	Assorted/oversized garage	Approved								
1993	Side setback/new home	Approved								
1993	Height/rear yard fence	Denied								
1993	Side setback/garage	Approved								
1993	Front & side setabcks/sign	Approved								
1993	Side setback/garage	Approved								
1993	Side setback/garage	Approved								
1993	Side setback/garage	Approved								
1994	Sign Setback	Approved								
1994	Rear setback/house addition	Denied								
1994	Height/Fence in rear yard	Approved								
1994	Rear setback/attached garage	Approved								
1995	Area/Floor space for B-1	Approved								
1995	Area/oversized garage	Approved								
1995	Rear setback/deck	Approved								
1995	Height/Fence in rear yard	Approved								
1995	Double driveway access	Approved								
1995	Front setback/attached garage	Approved								
1996	Front setback/ramp	Approved								

**Most Denials are Fence Variance Requests**

These Variances were considered before the change in the Variance process in 2011.



1997 Rear setback/shed	Approved
1997 Rear setback/garage addition	Approved
1997 Rear setback/garage	Approved
1997 Pavement in front yard & driveway width	Approved
1997 Allow loading from street	Approved
1997 Front yard setback (extension)	Approved
1998 Rear setback/garage	Approved
2000 Allow on-site housing on B-2 property	Denied
2001 Fence height	Approved
2001 Fence height	Approved
2001 Rear setback	Denied
2002 Front setback	Approved
2002 Rear setback	Approved
2003 Front setback	Approved
2003 Lot coverage	Denied
2004 Lot coverage	Approved
2004 Rear setback	Approved
2005 Side setback and lot size (3)	Approved
2005 Parking and lot coverage (4)	Approved
2005 Side setback & driveway width	Denied
2005 Side setback	Approved
2006 Fence Height	Approved
2006 Front Setback	Approved
2009 Front fence setback	Denied
2009 Side setback,	Approved
2009 coverage of year yard	Approved



**LAND USE APPLICATION SUMMARY**

Property Location: [Redacted]  
 Project Name: [Redacted] Retaining Walls  
 Prepared By: [Redacted]  
 Applicant: [Redacted]  
 Project Contact: [Redacted]  
 Request: Construct retaining walls that would not retain natural grade.  
 Required Applications:

<b>Variance</b>	To reduce the minimum interior side yard requirement adjacent to the north lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.
<b>Variance</b>	To reduce the minimum interior side yard requirement adjacent to the south lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.
<b>Variance</b>	To reduce the minimum rear yard requirement adjacent to the west lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.

**SITE DATA**

<b>Existing Zoning</b>	R2B Two-Family District UA University Area Overlay District
<b>Lot Area</b>	6,510 square feet
<b>Ward(s)</b>	2
<b>Neighborhood(s)</b>	Prospect Park
<b>Designated Future Land Use</b>	Urban Neighborhood
<b>Land Use Features</b>	Not applicable.
<b>Small Area Plan(s)</b>	<a href="#">Stadium Village University Avenue Station Area Plan (2012)</a>

<b>Date Application Deemed Complete</b>	[Redacted]	<b>Date Extension Granted by Applicant</b>	[Redacted]
<b>End of 60-Day Decision Period</b>	[Redacted]	<b>End of Extension</b>	[Redacted]

██████████

## BACKGROUND

**SITE DESCRIPTION AND PRESENT USE.** The existing single-family dwelling was permitted for construction in 1913. The dilapidated, detached 10 foot by 14 foot garage adjacent to the alley was permitted for construction in 1921. There is an existing parking pad located at the front of the dwelling with curb access from Seymour Avenue.

**SURROUNDING PROPERTIES AND NEIGHBORHOOD.** The surrounding properties are predominately single-family dwellings. The subject property abuts a dead-end, unimproved public alley. Interstate 94 is also one-half block away.

**PROJECT DESCRIPTION.** The applicant is proposing to install a retaining wall in the rear 34 feet of the property located at 184 Seymour Avenue Southeast. In this area, there is a detached garage and the grade slopes down 14 feet towards the public alley. The garage is proposed to be demolished. With the construction of the 12.5 foot retaining wall, backfill would be added for the purpose of creating a flatter, larger and more usable back yard. Along the alley, the wall would be 12.5 foot tall and the height would taper where the natural grade rises. On top of the retaining wall, a 4 foot tall, open and decorative aluminum fence would also be installed.

The retaining wall would abut the north and south interior side lot lines and the west rear lot line. The minimum yard requirement adjacent to the interior side lot lines is 6 feet. The minimum yard requirement adjacent to the rear lot lines is 5 feet. Walls that retain natural grade are permitted obstructions in required yards. However, walls that do not retain natural grade are not permitted obstructions. Because the proposed wall would not be retaining natural grade, yard variances are required to allow the wall.

The variances were continued from the ██████████ meeting of the Board of Adjustment to the ██████████ meeting to allow the applicant more time to review the CPED report, prepare the ██████████ case for the homeowner possible, and solve the issues with the site. The applicant granted an extension of the decision making period to ██████████ which allows sufficient time to accommodate any appeals. Updated documents that were submitted by the applicant since the ██████████ meeting have been attached to this report.

**PUBLIC COMMENTS.** Correspondence from the neighborhood group was received and is attached to this report. Any additional correspondence received prior to the public meeting will be forwarded on to the Board of Adjustment for consideration.

## ANALYSIS

### VARIANCE

The Department of Community Planning and Economic Development has analyzed the application for 1) a variance to reduce the minimum interior side yard requirement adjacent to the north lot line, 2) a variance to reduce the minimum interior side yard requirement adjacent to the south lot line, and 3) a variance to reduce the minimum rear yard requirement adjacent to the west lot line to allow a 12.5 foot tall retaining wall not retaining natural grade based on the following [findings](#):

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

**All variances:** The minimum interior side yard setback requirements adjacent to the north and south lot lines are 6 feet. The minimum rear yard setback requirement adjacent to the west lot line is 5 feet. A retaining wall is proposed to be installed in the rear 34 feet of the subject property in the required yards. In this area, the grade slopes down 14 feet towards the public alley. Along the alley, the wall would be 12.5 foot tall and the height would taper where the natural grade rises. In required yards, retaining walls are not permitted obstructions when they do not retain natural grade. The ordinance allows walls that retain natural grade.

Reasons stated by the applicant for requesting the variances include difficulty in maintaining the slope and to allow for the removal of the existing dilapidated garage in order to address rodent, raccoon, trespassing, and vagrancy issues. The garage holds up part of the slope. Replacing it with a retaining wall would also prevent compromising the stability of the neighboring retaining walls.

For a 12.5 foot tall retaining wall not retaining natural grade, CPED staff did not find that practical difficulties exist in complying with the ordinance because of circumstances unique to the property that were not created by the applicant. Although properties with substantial slopes are relatively unique within the city, properties with significant slopes are common in the immediate area. Therefore the steep slope is not a circumstance unique to this property. The slope also does not prevent reasonable use of the property. Although the grade changes significantly at the rear of the property, the remainder of the site is relatively flat. The need for a 12.5 foot tall wall would be created by backfilling on top of the natural grade. To make the slope more manageable, a terraced wall would more closely follow the topography without exceeding a height that would not be allowed for a fence, similar to the neighbor's property to the south. Stairs could be incorporated to facilitate ease of access to provide maintenance. A terraced wall may still require yard variances to account for some smaller portions not retaining natural grade, but would be more in keeping with the spirit and intent of the ordinance.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

**All variances:** In general, yard controls are established to provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. When a wall does not retain natural grade it is more akin to a fence in relation to impacts to adjacent properties. Fence standards are established to promote the public health, safety and welfare, encourage an aesthetic environment and allow for privacy, while maintaining access to light and air. Solid fences in interior side and rear yards are allowed to be up to 6 feet in height. The proposed wall height would greatly exceed what would be allowed for a fence. The total length of the wall would be 117 feet. Of that, approximately 80 feet would extend 6 or more feet above natural grade. A wall supporting significant modifications to grade has the potential to impact privacy of adjacent properties and reduce natural surveillance and visibility of the adjacent public alley. As proposed, the request would not be reasonable or consistent with the intent of the ordinance and the comprehensive plan. A terraced retaining wall could accomplish similar objectives stated by the applicant without creating adverse impacts.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

**All variances:** The granting of the variances would likely affect the character of the area and be injurious to the use or enjoyment of other property in the vicinity. When a wall does not retain natural grade it is more akin to a fence in relation to impacts to adjacent properties. Solid fences in interior side and rear yards are allowed to be up to 6 feet in height. The proposed wall height would greatly exceed what would be allowed for a fence. The total length of the wall would be 117 feet. Of that, approximately 80 feet would extend 6 or more feet above natural grade. A 12.5 foot tall wall supporting a significant modification of grade has the potential to impact privacy of adjacent properties and the character of the area. Properties with significant slopes are common in the immediate area. Allowing tall retaining walls for significant grade modifications would also affect the character of the area. The granting of the variances would not be detrimental to the health or welfare of the public or those utilizing the property provided the proposed wall is constructed to current building codes. However, reduced visibility of the adjacent public alley has the potential to affect the safety of the surrounding area.

## RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the Zoning Board of Adjustment adopt staff findings for the applications by [REDACTED] for the property located at [REDACTED]

### A. Variance of the north interior side yard requirement.

Recommended motion: **Deny** the variance to reduce the minimum interior side yard requirement adjacent to the north lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.

### B. Variance of the south interior side yard requirement.

Recommended motion: **Deny** the variance to reduce the minimum interior side yard requirement adjacent to the south lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.

### C. Variance of the west rear yard requirement.

Recommended motion: **Deny** the variance to reduce the minimum rear yard requirement adjacent to the west lot line to allow a 12.5 foot tall retaining wall not retaining natural grade.

## ATTACHMENTS

1. Written description and findings submitted by applicant
2. Zoning map
3. Site survey
4. Site plan
5. Engineered drawings
6. Photos and renderings
7. Wall materials
8. Public comments

[Redacted]  
[Redacted]



Property Owner: [Redacted]  
Landscape Designer: [Redacted]  
Property Address: [Redacted]  
Minneapolis, MN 55415

**2015 Variance Request for Retaining Wall along [Redacted] Property Lines**

Dear Neighbors of Prospect Park;

I am a landscape designer working at [Redacted]

We are hoping to improve the landscape, and one important goal is to tame the hillside on the west side of the property, which slopes 16-18' down to the back alley, and has been full of volunteer growth vegetation (buckthorn, boxelder, grape vine, etc.) for the past 40+ years. The back slope is no longer maintainable by the homeowner, and the existing concrete garage is an unusable eyesore.

What we would like to proceed with is a retaining wall system that can retain the hillside and create a larger more usable back yard. This will enable the hillside to be properly retained to prevent erosion, and also will make it more easily maintained in the future.

The City of Minneapolis does not allow walls to be built in the set back on properties, so we are applying for a variance in order to enable us to build a wall to properly retain the grade and establish a stabilized back yard, with new landscape work to enhance the look of the yard.

Please refer to the existing conditions photos and the concept rendering attached.

Sincerely,

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]

# Statement of Proposed Use and Description of the Project:

- We propose to build a retaining wall on the setback area of the property of [REDACTED] in Minneapolis, Minnesota. The retaining wall will be 12' tall, the same height of existing garage, and we purpose it be allowed to be built on the property setbacks. The existing conditions of the site have a steep hill grade, about 30 degrees, off of the back yard to the alley in the back yard. The hill is too steep to be properly maintained by the homeowner. We also propose removing an existing concrete garage that faces the alley and is falling apart. The proposed retaining wall will remove the issues of the slope and the maintainability of the yard.

# Variance Findings: 1

- Retaining the hillside with one continuous wall provides the best option to resolve the grading issues and to allow for the best use for the homeowner. Terracing the retaining walls provides several issues that will not work towards the goal of a sustainable landscape. The first issue with terracing is access to maintaining the terraces. The homeowner will not be able to climb over 4' tall retaining walls to maintain the landscape beds. In order to get to each terrace level stairs will need to be built into the wall. A wall system with 4 terraces would require 25 steps. Designing a staircase to fit this situation would require a system of switch backs of stairs and walkways using up a large portion of the yard just for the stair case. The engineering on building this type of wall system is much more difficult than building a singular wall. The increase cost, 25-50% more than the proposed wall, is not an option for the homeowner to cover. Multiple walls will increase the hard cover on the property and additional 236 sqft, at minimum, to allow for additional walls, steps to access the wall and walkway to connect the steps. Maintaining the landscape beds between the terrace will require the home owner to haul all of the debris and yard waste from the bottom of the yard, up all the stairs to the front yard where their trash services are collected. Creating the proposed retaining wall will allow for gently sloping yard that will allow for the best maintenance and the greatest reduction in rain water runoff.



# Variance Findings 2:

- The proposed retaining wall will raise the grade of the existing yard, allowing the homeowner to better use and maintain the property. [REDACTED] has owned the home since 1972, and raised her family there. Over the past few years she has found the hillside too steep for her to further maintain. She has taken pride in maintaining a beautiful yard. She would like to continue maintaining the yard to the level of standards she has for herself, and that her neighbors have become accustomed. The proposed retaining wall will provide a clean maintained look for many years to come.
- Leveling the existing yard with one continuous retaining wall will create the most sustainable yard possible. Hard coverage on the property will be lowered by 200 sqft over the current condition. The existing slope will go from a 30 degree grade slope to less than 5 degrees. This will increase the amount of rainfall infiltration, decreasing the runoff rate off of the site.
- The proposed retaining wall will not effect the light, air, open space and separation of uses to any neighbor on the south or west property since because the existing garage wall will simply be replaced by retaining walls. The neighbor on the north property line will have a new retaining wall that will effect the property slightly. The wall would not be visible from the house or the level portion on the yard. The retaining wall will be visible from the unmaintained wooded slope. The neighboring property has an existing four foot retaining wall built five feet in from the alley. At that point the tallest our proposed wall would be from that point on would be 7 foot tall, decreasing with the natural slope.

# Variance Findings 3:

- The retaining wall will be in keeping with the existing character of the neighborhood.
  - Many homes have existing retaining walls that back up to the alley. Most of these walls are built on what would be within the setback of the property, right up to the property line. Both neighboring properties have walls built within the setback area, at the property line. With many of the walls in the area deteriorating it would be a drastic change to require new walls to be pushed off of setbacks.
  - The proposed wall will increase the safety of the neighborhood. The alley behind the property dead ends into a wooded area. There is generally very little traffic along the alley, and that has drawn the interest of vagrants. The existing garage is a welcome hiding place for homeless people, and others looking for a shelter out of the site of authorities. The new wall will keep the area without hiding spots. The over grown nature of the hillside has also been known as a dumping ground for years. The existing garage is also housing many rodents and raccoons. These vermin have caused problems for the neighbors over the years. The proposed wall will have no effect on the visibility of the alley to either neighbor because it replaces an existing garage on one side, and the other neighbor does not have a visible view of the alley, and wont be able to see the wall from their yard.
  - Other walls in the neighborhood have been allowed to be built on the property line (see photo of house on Clarence Ave Se) and are taller than the typical fence of 6'. It appears that the walls granted in the surrounding neighborhood are designed to allow for the maximum usage of the yard.
  - Because of the steep slope of the yards the height on the retaining wall will only be 12' for 5 foot on the north property line. The wall on the south is only 8' above current grade for four feet, then it drops to 5'. Please see elevation drawings.
  - The property owners to the south and west have submitted letters of support for the project.
  - The West retaining wall will be set back 1' from the property line to allow room to plant vines to create a green wall and soften the effect of the wall.

**Department of Community Planning and Economic Development**  
**Variances**

[REDACTED]

**Date:** [REDACTED]

**Applicant:** [REDACTED]

**Address of Property:** [REDACTED] Marquette Avenue

**Contact Person and Phone:** [REDACTED]

**CPED Staff and Phone:** [REDACTED]

**Date Application Deemed Complete:** [REDACTED]

**End of 60-Day Decision Period:** [REDACTED]

**Ward:** 7      **Neighborhood Organization:** Downtown Minneapolis Neighborhood Association

**Existing Zoning:** B4S-2 Downtown Business District

**Existing Overlay District:** DP Downtown Parking Overlay District and NM Nicollet Mall Overlay District

**Zoning Plate Number:** [REDACTED]

**Proposed Use:** Two new monument signs

**Concurrent Review:**

- Variance to allow for more than one freestanding sign on a zoning lot.
- Variance to increase the maximum height of two new monument signs from 8 feet to approximately 10 feet 4 inches.

**Zoning code section authorizing the requested variance:** Chapter 525, Article IX Variances, specifically Section 525.520(21) “to vary the number, type, height, area or location of allowed signs...”

**Background:** The subject property is approximately 1.7 acres in area and is the site of [REDACTED]. The property is currently under construction to allow for an approximate 30,000 square foot addition to the gross floor area of the existing structure. The property is zoned B4S-2 Downtown Service District, and is located within the DP Downtown Parking and NM Nicollet Mall Overlay Districts. The applicant received land use approvals for a variance of the plaza standards and site plan review by the City Planning Commission on [REDACTED].

The applicant is proposing to add two new monument signs to the plaza at the west entry along [REDACTED] Street South. The proposed signs would be 10 feet 4 inches tall and the sign copy would be less than 32

square feet in area. The proposed freestanding monument signs would have an aluminum cabinet with a translucent graphic and frame and would be internally illuminated with white LED. The applicant has stated the signs were proportioned to be in scale with the building and to be readable from vehicular and pedestrian approaches to the site. The signs would be oriented perpendicular to the sidewalk and roadway, approximately 16 feet from the property line along [REDACTED] Street South. The zoning code limits the number of freestanding signs to one per zoning lot. Therefore, the applicant is requesting a variance to allow for two freestanding monument signs. The applicant has indicated that they are proposing to have two freestanding monument signs to serve the [REDACTED] unique artistic and entertainment mission by posting multiple events throughout the performance calendar. The maximum height of a freestanding monument sign is 8 feet and the applicant is requesting a variance to increase the height to approximately 10 feet 4 inches. The applicant has indicated the increase in height is necessary for safety, especially during peak times when the plaza is crowded and to allow increased visibility from Nicollet Mall.

Staff has received a letter of support from the Downtown Minneapolis Neighborhood Association, which is attached to the staff report. Staff will forward additional comments, if any are received, at the Board of Adjustment meeting.

**Findings Required by the Minneapolis Zoning Code:**

**VARIANCES:** (1) to allow for more than one freestanding sign on a zoning lot; and (2) to increase the maximum height of two new monument signs from 8 feet to approximately 10 feet 4 inches.

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

**Both variances:** The circumstances of the quantity and height sign variances are not unique to the parcel and have been created by the applicant. The applicant has stated the increase in number is to allow for the display of multiple events throughout the calendar year and the height increase is necessary to allow visibility both during peak times and from Nicollet Mall. The applicant has stated that the signs were proportioned to be in scale with the building and to be readable from vehicular and pedestrian approaches to the site. The signs are oriented perpendicular to the sidewalk and roadway, while placed approximately 16 feet from the property line along [REDACTED] Street South. Staff finds that that property does not have visibility issues for motorists, pedestrians or bicyclists and that one monument sign within the maximum height would allow for effective identification for the building and events.

- 2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

**Both variances:** The applicant is seeking variances to increase the maximum number of freestanding signs from one to two and to increase the height of both signs from 8 feet to 10 feet 4 inches. The zoning code regulations governing on-premise signs were established to allow

effective signage appropriate to the planned character of each zoning district, to promote an attractive environment by minimizing visual clutter and confusion, to minimize adverse effects on nearby property and to protect the public health safety and welfare. Staff finds that the proposed sign is inconsistent with the pedestrian scale and staff finds that one monument sign that meets the required height and area would allow for effective site identification.

- 3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

**Both variances:** The proposed signage may alter the essential character and be injurious to the use or enjoyment of property in the vicinity. Staff finds that the two proposed freestanding monument signs, 10 feet 4 inches in height will be inconsistent with the pedestrian scale and staff finds that one monument sign that complies with the sign regulations would allow for effective site identification. Granting the sign variances would not likely be detrimental to health, safety or welfare of the general public. The proposed sign would be internally illuminated and not have any flashing components or project light onto adjacent property or public walkways or streets.

**Findings Required by the Minneapolis Zoning Code for a sign adjustment:**

- 1. The sign adjustment will not significantly increase or lead to sign clutter in the area or result in a sign that is inconsistent with the purpose of the zoning district in which the property is located.**

**Both variances:** Although the applicant has stated that the multiple freestanding signs were intended to advertise multiple events, staff finds that the two signs, proposed adjacent to each other, would lead to sign clutter. The subject property is approximately 1.7 acres and has frontage along three public streets, however, the applicant is proposing to locate two freestanding signs in very close proximity to one another, within the plaza area. The applicant has stated the signs were proportioned to be in scale with the building and to be readable from vehicular and pedestrian approaches to the site. The zoning code regulations governing on-premise signs were established to allow effective signage appropriate to the planned character of each zoning district, to promote an attractive environment by minimizing visual clutter and confusion, to minimize adverse effects on nearby property and to protect the public health safety and welfare. Further, staff finds that the proposed sign height to be inconsistent with the pedestrian scale.

- 2. The sign adjustment will allow a sign that relates in size, shape, materials, color, illumination and character to the function and architectural character of the building or property on which the sign will be located.**

**Both variances:** Staff finds that the signs would relate in shape, material, color, illumination and character of the building on the property; however, the proposed sign will be out of scale at the pedestrian level. The signs will be professionally installed with quality materials. The proposed

freestanding monument signs would have an aluminum cabinet with a translucent graphic and frame and would be internally illumined with white LED.

**Recommendation of the Department of Community Planning and Economic Development:**

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **deny** the variance to allow for more than one freestanding sign on a zoning lot accessory [REDACTED] an [REDACTED] located at [REDACTED] Marquette Avenue in the B4S-2 Downtown Service District, NM Nicollet Mall Overlay District, DP Downtown Parking Overlay District.

**Recommendation of the Department of Community Planning and Economic Development:**

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **deny** the variance to increase the maximum height of two new monument signs from 8 feet to approximately 10 feet 4 inches accessory [REDACTED] an [REDACTED] located at [REDACTED] Marquette Avenue in the B4S-2 Downtown Service District, NM Nicollet Mall Overlay District, DP Downtown Parking Overlay District.

**Attachments:**

1. Written descriptions and findings submitted by the applicant
2. Letters to Council Member Goodman and Downtown Minneapolis Neighborhood Association
3. Correspondence
4. Zoning map
5. Site Plan
6. Sign plan
7. Photos