

**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. Initial requests for an extension of one (1) year or less:
 - a. A written request for an extension of one (1) year or less is received by the City at least 30 days prior to the expiration of the initial variance. In order to make the request, the applicant shall submit an application on a form provided by the City and pay an application fee in the amount set forth in the City’s fee schedule. The request for the extension must include facts demonstrating that a good faith attempt has been made by the applicant to complete or utilize the variance that was granted.

b. The Planning Director shall review the request and either approve or deny the extension. The Planning Director's decision may be appealed to the Board of Adjustment pursuant to §154.108 of this Code.

2. Subsequent requests for extensions and extensions for more than one (1) year:

a. Subsequent requests for extensions and requests for an extension of more than one (1) year must be made to the City at least 30 days prior to the expiration of the variance. In order to make the request, the applicant shall submit an application on a form provided by the City and pay an application fee in the amount set forth in the City's fee schedule. The request for the extension must include facts demonstrating that a good faith attempt has been made by the applicant to complete or utilize the variance that was granted.

b. The Planning Commission shall review the request and shall make a recommendation to the City Council as to whether the City Council should approve or deny the request.

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.