



City of Lake Elmo

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File

NOTICE OF MEETING

The City of Lake Elmo Planning Commission
Will hold a Special Meeting on
Monday, July 31, 2006, at 6:30 p.m.

AGENDA

1. Agenda
2. Zoning Ordinance
3. Adjourn

MEMO

(July 27, 2006 for the Meeting of July 31, 2006)

To: Lake Elmo Planning Commission

From: Kelli Matzek

Subject: Zoning Code Rewrite – Part 2

I have attached the updated version of the first four topics. These topics were first covered at the July 24th meeting. I have incorporated most of the suggestions I received.

- Title and Application
- Rules and Definitions
- Administration – Amendments
- Administration – Conditional Use Permits

This week I have approximately 19 pages of code for your review. I have covered the following topics:

- Interim Uses
- Administration – Admin Permits and Approvals
- Administration – Variances
- Administration – Appeals
- Certificate of Occupancy

The text with a single line through it is the existing Lake Elmo zoning text. As best I could, I placed the existing zoning code before the comparable proposed text. The rest of the language I have pulled from other city codes (Oak Park Heights and Plymouth).

The next meeting will be held on **Monday, August 7th at 6:30 p.m.** At that time we will be discussing the following topics:

- Fees
- Environmental Review
- Site Plan Review

If I have time to draft the text, we will also cover Non-Conformities and General Building and Performance Standards.

CHAPTER 154: ZONING CODE

Section

Title and Application

- 154.001 Title
- 154.002 Intent and Purpose
- 154.003 Relation to Comprehensive Municipal Plan
- 154.004 Standard, Requirement
- 154.005 Conformity With This Chapter
- 154.006 Building Compliance
- 154.007 Reduction of Yards or Lots Not Permitted
- 154.008 Monuments
- 154.009 Uses Not Provided For Within Zoning Districts
- 154.010 Separability
- 154.011 Authority

Rules and Definitions

- 154.030 Rules of Word Construction
- 154.031 Definitions

Administration – Amendments (Text and Map)

- 154.050 Pre-Application
- 154.051 Application Procedure
- 154.052 Procedure – Planning Commission Review
- 154.053 Procedure – City Council Review
- 154.054 Amendments – Initiation

Deleted: Procedure

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Administration – Conditional Use Permits

- 154.060 Purpose
- 154.061 Procedure
- 154.062 Procedure – Planning Commission Review
- 154.063 Procedure – City Council Review
- 154.064 Information Requirement
- 154.065 General Performance Standards
- 154.066 Revocation
- 154.067 Amendment
- 154.068 Expiration
- 154.069 Site Improvement Performance Agreement and Financial Guarantee

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TITLE AND APPLICATION

154.001 TITLE.

This Chapter shall be known as the "Lake Elmo Zoning Ordinance" except as referred to herein, where it shall be known as "this Chapter".

154.002 INTENT AND PURPOSE

The intent of this Chapter is to protect the public health, safety and general welfare of the community and its people through the establishment of minimum regulations in regard to location, erection, construction, alteration and use of structures and land. These regulations are established to assist the City in implementing its Comprehensive Plan; protecting and enhancing the natural environment and resources that currently exist within the City; ensuring orderly and quality development and redevelopment; protecting the quality and diversity of the City's tax base; protecting the quality of residential neighborhoods; limiting congestion in public streets and to foster public safety and convenience in travel and transportation; ensuring compatibility between different land uses; and regulating businesses that may have adverse secondary effects on the quality of life of Lake Elmo residents.

These regulations are also established to provide for administration of this Chapter; to provide for amendments; to prescribe penalties for violation of such regulations; and to define powers and duties of the City staff, the Zoning Board of Adjustment and Appeals, the Planning Commission and the City Council in relation to the Zoning Ordinance.

154.003 RELATION TO COMPREHENSIVE MUNICIPAL PLAN.

It is the policy of the City of Lake Elmo that the enforcement, amendment, and administration of this Chapter be accomplished consistent with the recommendations contained in the City Comprehensive Plan, as developed and amended from time to time by the City Council for the City. The City Council recognizes the City Comprehensive Plan as the official policy for the regulation of land use and development in accordance with the policies and purpose herein set forth. In accordance with Minnesota Statutes Chapter 473, the City will not approve any rezoning or other changes in these regulations that are inconsistent with the City Comprehensive Plan.

154.004 STANDARD, REQUIREMENT.

Where the conditions imposed by any provisions of this Chapter are either more or less restrictive than comparable conditions imposed by other law, ordinance, rule, or regulation of the city, state, or federal government, the law, ordinance, rule, or regulation which imposes the more restrictive condition, standard, or requirement shall prevail.

154.005 CONFORMITY WITH THIS CHAPTER.

No structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose nor in any manner which is not in conformity with the provisions of this Chapter.

154.006 BUILDING COMPLIANCE.

Except as herein provided, no building, structure or premises shall hereafter be used or occupied and no building permit shall be granted that does not conform to the requirements of this Chapter.

154.007 REDUCTION OF YARDS OR LOTS NOT PERMITTED.

No yard or lot existing at the time of passage of this Chapter shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Chapter shall meet at least the minimum requirements established by this Chapter.

154.008 MONUMENTS.

For the purpose of this Chapter, all international, federal, state, county and other official monuments, benchmarks, triangulation points, and stations shall be preserved in their precise locations; and it shall be the responsibility of the applicant to insure that these markers are maintained in good condition during and following construction and development. All section, one-quarter section and one-sixteenth section corners shall be duly described and tied.

154.009 USES NOT PROVIDED FOR WITHIN ZONING DISTRICTS.

Whenever in any zoning district a use is not specifically allowed as a permitted accessory, conditional, or interim use, nor is such use allowed by administrative permit, the use shall be considered prohibited. In such cases, the City Council or the Planning Commission, on their own initiative or upon request, may conduct a study to determine if the use is acceptable and if so, what zoning district would be most appropriate and the determination as to conditions and standards relating to development of the use. The City Council, Planning Commission or property owner, upon receipt of the staff study may, if appropriate, initiate an amendment to the Zoning Ordinance to provide for the particular use under consideration or may find that the use is not compatible for development within the City.

154.010 SEPARABILITY

It is hereby declared to be the intention of the City that the several provisions of this Chapter are separable in accordance with the following:

(A) If any court jurisdiction shall adjudge any provision of this Chapter to be invalid, such judgment shall not affect any other provisions of this Chapter not specifically included in said judgment.

(B) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Chapter to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building, or structure not specifically included in said judgment.

154.011 AUTHORITY

This Chapter is enacted pursuant to the authority granted by the Municipal Planning Act, Minnesota Statutes, Section 462.351 to 462.363.

154.012 ZONING MAP

The locations and boundaries of the district established by this Ordinance are hereby set forth on the Lake Elmo, Minnesota Zoning Map; and said Map is hereby made a part of this Ordinance; said Map shall be known as the "Lake Elmo, Minnesota Zoning Map." Said Map and all notations, references and data shown thereon are hereby incorporated by reference into this Ordinance and shall be as much a part of it as if all were fully described herein. It shall be the responsibility of the Zoning Administrator to maintain said Map, and amendments thereto shall be recorded on said Zoning Map within thirty (30) days after official publication of amendments. The official Zoning Map shall be kept on file in the City Hall.

154.013 ZONING DISTRICT BOUNDARIES

The boundaries between districts are, unless otherwise indicated, either the center line of streets, alleys or railroad rights-of-way or lot lines or section lines or such centerlines or lot lines parallel or perpendicular thereto.

154.014 FUTURE ANNEXATIONS

Any land annexed to the City in the future shall be placed in the A (Agricultural) district until another zoning classification is approved by action of the City Council after receipt of the recommendation of the Planning Commission.

RULES AND DEFINITIONS

154.030 RULES OF WORD CONSTRUCTION

For the purposes of this Ordinance, certain terms or words used herein shall be interpreted as follows:

- (A) The word "person" includes an owner or representative of the owner, firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (B) The present tense includes the future tense.
- (C) The words "shall" and "must" are mandatory; the word "may" is permissive.
- (D) The singular includes the plural, and the plural the singular.
- (E) All measured distances expressed in feet shall be to the nearest tenth of a foot.
- (F) When calculating parking stall requirements, any fraction of a number shall constitute an additional parking space.

- (G) Unless specifically exempted, size or area limitations imposed by this Chapter on a specific use or activity refer to the maximum gross area devoted to such use or activity in any individual building or structure.
- (H) For terminology not defined in this Chapter, elsewhere in the City Code, or in the Minnesota State Building Code, Merriam-Webster's Collegiate Dictionary Tenth Edition shall be used to define such terms.
- (I) If a conflict arises between the graphic illustrations presented in this code and the text of this code, the text shall prevail.

DEFINITIONS INTENTIONALLY LEFT OUT AT THIS TIME

ADMINISTRATION – AMENDMENTS (TEXT AND MAP)

154.050 PRE-APPLICATION

Applicants requesting application for amendments or conditional use permits should contact the Zoning Administrator in order to set up a "pre-application" meeting with the City Administrator, City Engineer, City Attorney, City Planner, City Building Official, and other City staff to discuss the project in question. A pre-application "staff meeting" is strongly recommended for all types of proposals to answer questions relating to overall project concept, the application process, payment of fees, general ordinance requirements and the general details of the request. The pre-application meeting is not necessary but is recommended.

154.051 APPLICATION PROCEDURE

(A) Requests for zoning (text or map) amendments shall be filed with the Zoning Administrator on an official application form. The applicant's signature shall be provided on the application form. Additionally, if the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. A completed application shall include:

- (1) a fee as set forth in the City Code;
- (2) a location map showing the general location of the proposed use within the community;
- (3) detailed written and graphic materials, the number and size as prescribed by the Zoning Administrator, fully explaining the proposed change, development, or use;
- (4) a map showing all principal land use within three hundred fifty (350) feet of the parcel for which application is being made;

(5) a legal description and proof of ownership of the property for which the amendment is requested consisting of an abstract of title or registered property certificate, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;

(6) certification that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the rezoning application relates;

(7) two copies of a list of property owners located within three hundred fifty (350) feet of the subject property in a format prescribed by the Zoning Administrator. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified information requirements.

(B) Within fifteen (15) business days of receipt of a complete application, as determined by staff review, for a rezoning (map amendment or text amendment), the Zoning Administrator shall cause a notice to be mailed to all owners of land within three hundred fifty (350) feet of the boundary of the property in question, informing them of the receipt of the application and the anticipated schedule for consideration of the amendment. This provision shall not apply in the case of a rezoning initiated by the City if the amendment affects an area greater than forty (40) acres.

(C) Upon receipt of a complete application, as determined by staff review, and following preliminary staff analysis of the application and request, the Zoning Administrator, when appropriate, shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council. Notice of said hearing shall consist of the purpose, time, and place of the public hearing as well as the description of the request. The notice shall be published in the official newspaper at least ten (10) days prior to the hearing and written notification of said hearing shall be mailed at least ten (10) days prior to all owners of land within three hundred fifty (350) feet of the boundary of the property in question.

(D) Failure of a property owner to receive said notice(s) shall not invalidate any such proceedings as set forth within this Chapter.

(E) The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation of the action to the City Council.

154.052 PROCEDURE - PLANNING COMMISSION REVIEW

(A) The Planning Commission shall consider possible adverse effects of the proposed amendment. Its judgment shall be based upon (but not limited to) the following factors:

(1) The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the City Comprehensive Plan, including public facilities and capital improvement plans.

(2) The proposed action meets the purpose and intent of this Ordinance or in the case of a map amendment, it meets the purpose and intent of the individual district.

(3) There is adequate infrastructure available to serve the proposed action.

(4) There is an adequate buffer or transition provided between potentially incompatible districts.

(B) The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.

(C) The applicant or a representative thereof may appear before the Planning Commission in order to present information and answer questions concerning the proposed request.

(D) The Planning Commission shall make its recommendation on the application to the Council, in writing, within sixty (60) days after the public hearing, unless the applicant consents to extend consideration by the Planning Commission. The report shall recommend that the amendment be granted or denied and shall include the Planning Commission's recommendation as to any conditions to be imposed if the amendment is granted, including time limits or provisions for periodic review and shall state the reasons for the recommendation. Such recommendations shall be accompanied by the report and recommendation of the City staff.

(E) If the Planning Commission fails to file a report with the Zoning Administrator within the time provided by this section, the application shall be referred to the Council as provided in this section, without report, after the time for filing the report has expired.

154.053 PROCEDURE - CITY COUNCIL REVIEW

(A) The City Council shall not act upon an amendment until they have received a report and recommendation from the Planning Commission and the City staff or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.

(B) Upon receiving the report and recommendation of the Planning Commission and the City staff, the City Administrator shall schedule the application for consideration

by the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.

(C) Upon receiving the report and recommendation of the Planning Commission and the City staff, the City Council shall have the option to set and hold a public hearing if deemed necessary.

(D) If, upon receiving said reports and recommendations of the Planning Commission and City staff, the City Council finds that specific inconsistencies exist in the review process and thus the final recommendations of the City Council will differ from that of the Planning Commission, the City Council may before taking final action, refer the matter back to the Planning Commission for further consideration. The City Council shall provide the Planning Commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.

(E) For any application which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, approval shall require passage by a two-thirds (2/3) vote of the full City Council. Approval of any other proposed amendment shall require passage by a majority vote of the full Council.

(F) The amendment shall not become effective until such time as the City Council approves an ordinance reflecting said amendment.

(G) Whenever an application for an amendment has been considered and denied by the City Council, a similar application for an amendment affecting substantially the same property shall not be considered again by the Planning Commission or City Council for at least six (6) months from the date of its denial; and a subsequent application affecting substantially the same property shall likewise not be considered again by the Planning Commission or City Council for an additional six (6) months from the date of the second denial unless a decision to reconsider such matter is made by not less than a majority of the full City Council.

154.054 AMENDMENTS - INITIATION

An amendment to this section may be initiated by the Council, the Planning Commission, or by petition of affected property owners, as defined in this section. An amendment not initiated by the Planning Commission shall be referred to the Planning Commission for study and report, as provided in this section. The proposal may not be acted upon by the Council until it has received the recommendation of the planning agency on the proposed amendment or until forty-five (45) days have elapsed from the date of reference of the amendment without a report by the Planning Commission.

ADMINISTRATION – CONDITIONAL USE PERMITS

154.060 PURPOSE

The purpose of a conditional use permit is to authorize and regulate uses which may be beneficial in a specific instance to the general welfare of the community, yet ensure that such uses are not detrimental to surrounding property, and are consistent with the stated purpose of the zoning district in which such uses are located regarding conditions of operation, location, arrangement, and construction.

154.061 PROCEDURE

(A) Requests for conditional use permits, as provided within this Chapter, shall be filed with the Zoning Administrator on an official application form. The applicant's signature shall be provided on the application form. Additionally, if the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by:

- (1) a fee as set forth in the City Code;
 - (2) a location map showing the general location of the proposed use within the community;
 - (3) detailed written and graphic materials, the number and size as prescribed by the Zoning Administrator, fully explaining the proposed change, development, or use;
 - (4) a map showing all principal land use within five hundred (500) feet of the parcel for which application is being made;
 - (5) a legal description and proof of ownership of the property for which the amendment is requested consisting of an abstract of title or registered property certificate, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
 - (6) certification that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the rezoning application relates;
 - (7) two copies of a list of property owners located within five hundred (500) feet of the subject property in a format prescribed by the Zoning Administrator.
- The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified information requirements.

The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified information requirements.

(B) Upon receipt of a complete application, as determined by staff review, and following preliminary staff analysis of the application and request, the Zoning Administrator, when appropriate, shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its findings and make recommendations to the City Council. Notice of said hearing shall consist of the purpose, time and place of the public hearing along with the description of request and be published in the official newspaper at least ten (10) days prior to the hearing and written notification of said hearing shall be mailed at least ten (10) days prior to all

owners of land within five hundred (500) feet of the boundary of the property in question, except in the case of correctional facilities and waste facilities where the notification shall be to property owners located within one thousand three hundred twenty (1,320) feet of the subject property.

(C) Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Chapter.

(D) The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the City Council.

(E) The Zoning Administrator shall maintain a record of all applications and all conditional use permits issued including information on the use, location, conditions imposed by the community, time limits, review dates, and such other information as may be appropriate.

154.062 PROCEDURE – PLANNING COMMISSION REVIEW

(A) The Planning Commission shall consider possible adverse effects of the proposed conditional use. Its judgment shall be based upon (but not limited to) the following factors:

(1) Compliance with and effect upon the Comprehensive Plan, including public facilities and capital improvement plans.

(2) The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.

(3) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

(4) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

(5) Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.

(6) The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

(7) The conditional use complies with the general and specific performance standards as specified by this Section and this Chapter.

(B) The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.

(C) The applicant or a representative thereof may appear before the Planning Commission in order to present information and answer questions concerning the proposed request.

(D) The Planning Commission shall make a finding of fact and make a recommendation on such actions or conditions relating to the request as they deem necessary to carry out the intent and purpose of this Chapter. Such recommendation shall be in writing and accompanied by the report and recommendation of the City staff.

154.063 PROCEDURE – CITY COUNCIL REVIEW

(A) The City Council shall not grant a conditional use permit until they have received a report and recommendation from the Planning Commission and the City staff, or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.

(B) Upon receiving the report and recommendation of the Planning Commission and the City staff, the City Manager shall schedule the application for consideration by the City Council. Such reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting.

(C) Upon receiving the report and recommendation of the Planning Commission and the City staff, the City Council shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact and may impose any condition they consider necessary to protect the public health, safety and welfare.

(D) If, upon receiving said reports and recommendations of the Planning Commission and City staff, the City Council finds that specific inconsistencies exist in the review process and thus the final recommendations of the City Council will differ from that of the Planning Commission, the City Council may, before taking final action, refer the matter back to the Planning Commission for further consideration. This procedure shall be followed only one time on a singular action.

(E) Approval of a request shall require passage by a majority vote of the entire City Council.

(F) Whenever an application for a conditional use permit has been considered and denied by the City Council, a similar application for a conditional use permit affecting substantially the same property shall not be considered again by the Planning

Commission or City Council for at least six (6) months from the date of its denial; and a subsequent application affecting substantially the same property shall likewise not be considered again by the Planning Commission or City Council for an additional six (6) months from the date of the second denial unless a decision to reconsider such matter is made by a majority vote of the full City Council.

154.064 INFORMATION REQUIREMENT

The information required for all conditional use permit applications shall be as specified in Section ### (Site Plan Review) of this Chapter.

154.065 GENERAL PERFORMANCE STANDARDS

As may be applicable, the evaluation of any proposed conditional use permit request shall be subject to and include, but not limited to, the following general performance standards and criteria:

(A) The use and the site in question shall be served by a street of sufficient capacity to accommodate the type and volume of traffic which would be generated.

(B) The site design for access and parking shall minimize internal as well as external traffic conflicts and shall be in compliance with Section 21135 of this Chapter.

(C) If applicable, a pedestrian circulation system shall be clearly defined and appropriate provisions made to protect such areas from encroachment by parked or moving vehicles.

(D) Adequate off-street parking and off-street loading shall be provided in compliance with Section 21135 of this Chapter.

(E) Loading docks and drive-up facilities shall be positioned so as to minimize internal site access problems and maneuvering conflicts, to avoid visual or noise impacts on any "adjacent" residential use or district, and are in compliance with Section ## of this Chapter.

(F) Whenever a non-residential use "is adjacent to" a residential use or district, a buffer area with screening and landscaping shall be provided in compliance with Section ## of this Chapter.

(G) General site screening and landscaping shall be provided in compliance with Section ## of this Chapter.

(H) All exterior lighting shall be so directed so as not to cast glare toward or onto the public right-of-way or neighboring residential uses or districts, and shall be in compliance with Section ## of this Chapter.

(I) Potential exterior noise generated by the use shall be identified and mitigation measures as may be necessary shall be imposed to insure compliance with Section ## of this Chapter.

(J) The site drainage system shall be subject to the review and approval of the City.

(K) The architectural appearance and functional design of the building and site shall not be so dissimilar to the existing or potential buildings and area so as to cause impairment of property values or a blighting influence. All sides of the principal and accessory structures are to have essentially the same or coordinated, harmonious exterior finish materials and treatment.

(L) Provisions shall be made for an interior location for recycling and trash handling and storage or an outdoor, enclosed receptacle area shall be provided in compliance with Section ## of this Chapter.

(M) All signs and informational or visual communication devices shall be in compliance with Section ## of this Chapter.

(N) The use and site shall be in compliance with any federal or state laws or regulations which are applicable and any related permits are obtained and documented to the City.

(O) Any applicable business licenses mandated by City Code are approved and obtained.

(P) The hours of operation may be restricted when there is potential negative impact upon a residential use or district.

(Q) The use complies with all applicable performance standards of the zoning district in which it is located.

154.066 REVOCATION

The Planning Commission may recommend, and the City Council may direct, the revocation of any conditional use permit for cause upon determination that the authorized conditional use is not in conformance with the conditions of the permit or is in continued violation of this Chapter, City Codes, or other applicable regulations. The City Council or Planning Commission shall initiate an application and the Zoning Administrator shall notify the responsible person to whom the permit was issued, that they have an opportunity to show cause why the permit should not be revoked. The application shall be processed and considered pursuant to Section ## of this Chapter. The Zoning Administrator shall provide the responsible person to whom the permit was issued a copy of the proceedings and findings of the Planning Commission and City Council.

154.067 AMENDMENT

Holders of a conditional use permit may propose amendments to the permit at any time, following the procedures for a new permit as set forth in this section, except where administrative approval may be granted, as defined and set forth in Section 21045. No significant changes in the circumstances or scope of the permitted use shall be undertaken without approval of those amendments by the City. The Zoning Administrator shall determine what constitutes significant change. Significant changes include, but are not limited to, hours of operation, number of employees, expansion of structures and/or premises, different and/or additional signage, and operational modifications resulting in increased external activities and traffic, and the like. The Planning Commission may recommend, following the procedures for hearing and review set forth in this section and the City Council may approve significant changes and modifications to conditional use permits, including the application of additional or revised conditions.

154.068 EXPIRATION

Unless the City Council specifically approves a different time when action is officially taken on the request, permits 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 within one (1) year of the date the conditional use permit is issued; or, unless before the expiration of the one (1) year period; the applicant shall apply for an extension thereof by completing and submitting a request for extension, including the renewal fee as set forth in the City Code. The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the conditional use permit. A request for an extension not exceeding one (1) 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 (1) 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.

154.069 SITE IMPROVEMENT PERFORMANCE AGREEMENT AND FINANCIAL GUARANTEE

Following the approval of a conditional use permit as required by this Section and prior to the issuing of any building permits or the commencing of any work, the applicant, as may be applicable, shall guarantee to the City the completion of all private exterior amenities as shown on the approved site plan and as required by the conditional use permit approval. The guarantee shall be made by means of a site improvement performance agreement and a financial guarantee as specified in Section ## of this Chapter.

CHAPTER 154: ZONING CODE (cont.)

Section

Interim Uses

- 154.080 Purpose and Intent
- 154.081 Procedure
- 154.082 General Standards
- 154.083 Termination
- 154.084 Certification of Taxes Paid

Administration – Administrative Permits and Approvals

- 154.090 Purpose
- 154.091 Procedure – Administrative Permits
- 154.092 Information Requirement – Administrative Permits
- 154.093 Performance Standards
- 154.094 Administration and Enforcement
- 154.095 Non-Permit Approvals

Administration – Variances

- 154.100 Purpose
- 154.101 Board of Zoning Adjustments and Appeals
- 154.102 Review Criteria
- 154.103 Minor Variance
- 154.104 Major Variance
- 154.105 Appeal of Board Ruling
- 154.106 Expiration
- 154.107 Site Improvement Performance Agreement and Financial Guarantee

Administration – Appeals

- 154.120 Board Designations
- 154.121 Applicability
- 154.122 Filing
- 154.123 Stay of Proceedings
- 154.124 Procedure
- 154.125 Appeals From the Board of Adjustment and Appeals

Fees

Postponed

Certificate of Occupancy

- 154.150 Administration and Enforcement
- 154.151 Penalties, Violation and Enforcement

INTERIM USES

154.080 PURPOSE AND INTENT

The purpose and intent of allowing interim uses is:

(A) To allow a use for a brief period of time, not in excess of one year, until a permanent location is obtained or while the permanent location is under construction.

(B) To allow a use that is presently judged acceptable by the City Council, but that with anticipated development or redevelopment, will not be acceptable in the future or will be replaced in the future by a permitted or conditional use allowed within the respective district.

(C) To allow a use which is reflective of anticipated long range change to an area and which is in compliance with the Comprehensive Plan provided that said use maintains harmony and compatibility with surrounding uses and is in keeping with the architectural character and design standards of existing uses and development.

154.081 PROCEDURE

(A) Uses defined as interim uses which do not presently exist within a respective zoning district shall be processed according to the standards and procedures for a conditional use permit as established by Section ## of this Chapter.

(B) Uses defined as interim uses which do not presently exist within a respective zoning district shall be processed according to the standards and procedures for a conditional use permit as established with Section ##.

(C) Effect of Permit. An "interim use permit" for seasonal farmer's market and produce sales may be issued for a period of up to eight months per calendar year after which the permit may be reissued for up to eight month periods per calendar year by the Zoning Administrator. The interim use permit may be reissued if the farmer's market or produce sale is consistent with the original interim use permit approval, and is in compliance with Section ## of this Chapter.

154.082 GENERAL STANDARDS

An interim use shall comply with the following:

(A) Meet the standards of a conditional use permit set forth in Section ## of this Chapter.

(B) Conform to the applicable general performance standards of Section ## of this Chapter.

- (C) Conforms to all zoning regulations as otherwise applicable.
- (D) The use is allowed as an interim use in the respective zoning district.
- (E) The date or event that will terminate the use can be identified with certainty.
- (F) The use will not impose additional unreasonable costs on the public.
- (G) The user agrees to any conditions that the City Council deems appropriate for permission of the use.

154.083 TERMINATION

An interim use shall terminate on the happening of any of the following events, whichever occurs first:

- (A) The date stated in the permit.
- (B) Upon violation of conditions under which the permit was issued.
- (C) Upon change in the City's zoning regulations which renders the use non-conforming.
- (D) The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.

154.084 CERTIFICATION OF TAXES PAID

Prior to approving an application for an interim use permit, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the interim use permit application relates.

ADMINISTRATION – ADMINISTRATIVE PERMITS AND APPROVALS

154.090 PURPOSE

The purpose of this section is to establish regulations and procedures for the processing and consideration of activities allowed by administrative permit, and of matters requiring the approval of the Zoning Administrator with the goal of protecting the health, safety, and welfare of the citizens of the City.

154.091 PROCEDURE - ADMINISTRATIVE PERMITS

(A) Requests for administrative permits, as provided within this Chapter, shall be filed with the Zoning Administrator on an official application form. The applicant's signature shall be provided on the application form. Additionally, if the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner.

(B) The application shall be accompanied by a non-refundable fee as set forth by the City Code for administrative permit applications. Applications for amending permits shall be accompanied by a non-refundable fee as set forth by the City Code for administrative permits.

(C) The Zoning Administrator shall review the application and related materials and shall determine whether the proposal is in compliance with all applicable evaluation criteria, codes, ordinances, and applicable performance standards set forth in this Chapter.

(D) The Zoning Administrator shall consider possible adverse effects of the proposed events or activity. Judgment shall be based upon (but not limited to) the following factors:

(1) Compliance with and effect upon the Comprehensive Plan and public facilities plans.

(2) The establishment, maintenance or operation of the use, event or activity will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.

(3) The use, event, or activity will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.

(4) The establishment of the use, event or activity will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

(5) Adequate public facilities and services are available or can be reasonably provided to accommodate the use, event or activity which is proposed.

(6) The use, event or activity shall, in all other respects, conform to the applicable regulations of the district in which it is located.

(7) The use, event or activity and site conform to the performance standards as outlined in Section ## and all other applicable provisions of this Chapter.

(E) The Zoning Administrator shall make a determination on approval or denial of the administrative permit within sixty (60) days from the date of submission of a complete application.

(F) A written permit shall be issued to the applicant when a determination of compliance has been made. Specific conditions to assure compliance with applicable evaluation criteria, codes, ordinances, and the standards of this Chapter shall be attached to the permit.

(G) Determination of non-compliance with applicable codes, ordinances, and the standards in this paragraph shall be communicated to the applicant in writing and the application for the permit shall be considered denied; unless, within ten (10) days of the date of such notice, the applicant submits revised plans and/or information with which the Zoning Administrator is able to determine compliance.

(H) Unresolved disputes as to administrative application of the requirements of this paragraph shall be subject to appeal as defined by Section ## of this Chapter.

154.092 INFORMATION REQUIREMENT - ADMINISTRATIVE PERMITS

The information required for all administrative permit applications shall include:

(1) A concise statement describing the proposed use, event or activity, including the purpose, type of merchandise involved, dates and times of operation, number of employees involved, provisions for on-site security, provisions for on-site parking, and other pertinent information required by the Zoning Administrator to fully evaluate the application.

(2) A copy of the approved site plan for the property or an "as built" survey which accurately represents existing conditions on the site, including entrances and exits, bona fide parking and driving areas, and which accurately indicates any proposed temporary structures, including tents, stands, and signs.

(3) An accurate floor plan, when in the judgment of the Zoning Administrator, such a plan is necessary to properly evaluate the location of the event and the effectiveness of available entrances and exits.

(4) A copy of the current sales tax certificate issued by the State of Minnesota, if applicable.

(5) Information identified in Section ## of this Chapter, as may be applicable.

(6) Prior to approving an application for an administrative permit, the applicant shall provide certification to the City that there are no delinquent property

taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the administrative permit application relates.

154.093 PERFORMANCE STANDARDS

All uses, events or activities allowed by administrative permit shall conform to the applicable standards outlined in the zoning district in which such use, event or activity is proposed.

154.094 ADMINISTRATION AND ENFORCEMENT

(A) The Zoning Administrator shall keep a record of applications and administrative permits.

(B) A copy of all administrative permits issued shall be forwarded to appropriate staff as determined by the Zoning Administrator.

(C) Enforcement of the provisions of this paragraph shall be in accordance with Section ## of this Chapter. Violation of an issued permit or of the provisions of this section also shall be grounds for denial of future permit applications.

154.095 NON-PERMIT APPROVALS

In cases where the Zoning Administrator is given approval authority without a requirement for an administrative permit, determinations shall be based upon the criteria outlined in Section ## of this Chapter.

~~300.06 Administration.~~

~~Subd. 1 Administrator.~~

~~The office of Zoning Administrator is continued; the Zoning Administrator shall be appointed by the Council and serve at its pleasure.~~

~~Subd. 2 Duties of the Zoning Administrator.~~

~~A. The Zoning Administrator shall enforce the provisions of this section as provided in this section; in addition to the duties and powers of the Zoning Administrator under this section, express or implied, the Zoning Administrator shall have the duty and power to:~~

- ~~1. Issue permits required by this section;~~
- ~~2. Conduct inspections of land, buildings, or structures at reasonable times, to determine compliance with and enforce the provisions of this section;~~

- ~~3. Maintain all records necessary for the enforcement of this section; including, but not limited to all maps, amendments and special use permits, variances, appeal notices, and applications;~~
- ~~4. Receive, file, and forward all appeals, notices, applications for variances, or other matters to the appropriate officials or boards;~~
- ~~5. Institute in the name of the City any appropriate actions or proceedings to enforce this section;~~
- ~~6. Serve as ex officio, non voting member of the Planning Commission.~~

Subd. 3 Variances.

~~A. **Variances.** The Planning Commission shall hear requests for variance from the literal provisions of this section in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant the variance only when it is demonstrated that:~~

- ~~1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other unique circumstances;~~
- ~~2. That literal interpretation of the provisions of this section would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this section;~~
- ~~3. That the special conditions or circumstances do not result from the actions of the applicant;~~
- ~~4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to owners of other lands, structures, or buildings in the same district;~~
- ~~5. The variance requested is the minimum variance which would alleviate the hardship;~~
- ~~6. The variance would not be materially detrimental to the purposes of this section, or to property in the same zone.~~

~~— The Planning Commission may not permit as a variance any use that is not permitted under this section for property in the zoning district where the land is located. The Commission may permit as a variance the temporary use of a one family dwelling as a two family dwelling provided that:~~

- a. ~~The dwelling has existed for a least ten years, and the multiple use existed prior to the adoption of this Code.~~
- b. ~~The septic system meets or exceeds the septic system regulations.~~
- 7. ~~The Commission may impose conditions in the granting of a variance to insure compliance and to protect adjacent properties.~~
- 8. ~~Hardship means the proposed use of the property and associated structures in question cannot be established under the conditions allowed by this section or its amendments and no other reasonable alternative use exists. The plight of the landowner must be due to physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures or buildings in the same zoning district; these unique conditions of the site cannot be caused or accepted by the landowner after the effective date of this section or its amendments.~~
- 9. ~~Economic consideration alone shall not constitute a hardship.~~

B. Application. ~~An application for a variance shall be filed with the Zoning Administrator. The application shall be accompanied by a fee in the amount set forth from time to time by resolution of the Council, and development plans showing such information as the Zoning Administrator may reasonably require for purposes of this section.~~

- 1. ~~The application shall contain sufficient information for the Planning Commission to determine whether the proposed variance will meet all applicable development standards if the variance is granted. In all cases, the application shall include: _____~~
 - a. ~~Name and address of the applicant;~~
 - b. ~~The legal description of the property involved in the request for variance, including the street address, if any, of the property;~~
 - c. ~~The name and address of the owners of the property and any other persons having a legal interest in the property;~~
 - d. ~~A site plan drawn to scale showing the property dimensions;~~
 - e. ~~Location of all existing and proposed buildings and their size including square footage;~~
 - f. ~~Curb cuts, driveways, access roads, parking spaces, off street loading areas, and sidewalks;~~

~~g. The variance requested and the reasons for the request;~~

C. Conditions of Approval. ~~The Planning Commission may impose conditions in the granting of a variance which the Commission may reasonably determine to be necessary to protect adjacent properties, preserve the public health, safety, and welfare, and comply with the intent and purposes of this section. The Planning Commission may also impose conditions and requirements as are necessary to insure compliance with the terms of the variance.~~

D. Hearing Procedure.

- ~~1. The Zoning Administrator shall, upon the filing of an application for a variance, refer the matter to the Planning Commission and establish a time for the hearing of the matter by the Commission no less than fifteen (15) days after the filing of the application and no more than twenty five (25) days after the filing of the application.~~
- ~~2. The Zoning Administrator shall notify the applicant and the abutting property owner(s) of the time and place of the hearing. The notice shall be in writing and shall be served on the person personally at least ten (10) days preceding the hearing. In lieu of the personal service, the notice may be served on the person by mail, provided the notice shall be mailed at least thirteen (13) days preceding the date of the hearing. The applicant shall provide a list of the abutting property owners to the Zoning Administrator.~~
- ~~3. On request of the Zoning Administrator, the Planning Commission, or the applicant, the hearing shall be continued for a reasonable time, not to exceed thirty (30) days from the date of filing of the application for variance, in order to allow the Zoning Administrator, Commission, or applicant, or the applicant's authorized representative, to provide additional information to the Commission.~~
- ~~4. The Planning Commission shall approve or deny any application for a variance and issue its order with respect to the application within thirty (30) days from the date of the hearing on the matter, unless an extension has been granted.~~

E. Record of Findings.

- ~~1. The Planning Commission shall make written findings for all variance applications and shall state in the findings the reasons for its decision. The order issued by the Commission shall include the legal description of the land involved. Any such order shall be filed with the~~

~~Zoning Administrator who shall immediately mail a copy of the order, bearing the notation of the filing date, to applicant.~~

- ~~2. A certified copy of any order issued by the Planning Commission for a variance, may be filed with the County Recorder or Registrar of Titles for record after the time for appeal has expired.~~

~~F. **Board of Adjustment and Appeals.** The Council is established as the Board of Adjustment and Appeals. The Board of Adjustment and Appeals shall have the following powers with respect to this section:~~

- ~~1. The exclusive power to hear an appeal from any decision made by the Planning Commission relative to a variance application.~~
- ~~2. The exclusive power to hear and decide appeals where it is alleged that there is an error in any decision, order, requirement, or determination made by an administrative officer in the enforcement of the zoning ordinance.~~
- ~~3. The appeal shall be filed within five (5) days from the date that the decision, order, requirement, or determination is made and shall state:~~
 - ~~a. The particular decision, order, requirement, or determination from which the appeal is taken.~~
 - ~~b. The name and address of the appellant.~~
 - ~~c. The grounds for the appeal.~~
 - ~~d. The relief requested by the appellant.~~

~~G. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment and Appeals, to whom the appeal is taken certifies that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.~~

~~H. The Board of Adjustment and Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that extent shall have all the powers of the officer from whom the appeal was taken, and may direct the issuance of a permit.~~

~~I. **Hearing Procedures.**~~

- ~~1. The Zoning Administrator shall, upon the filing of a notice of appeal, refer the matter to the Board of Adjustment and Appeals and establish a time for the hearing of the matter by the Board no less than fifteen (15)~~

~~days after the filing of the notice or application and no more than twenty five (25) days after the filing of the notice of appeal.~~

- ~~2. The Zoning Administrator shall notify the appellant or applicant, the chairperson of the Planning Commission, the building official, the abutting property owner, and in the case of an appeal, the officer from whom the appeal is taken, of the time and place of the hearing. The notice shall be in writing and shall be served on the person personally at least ten (10) days preceding the hearing. In lieu of the personal service, the notice may be served on the person by mail, provided the notice shall be mailed at least fourteen (14) days preceding the date of the hearing.~~
- ~~3. The Board of Adjustment and Appeals shall decide any appeal within thirty (30) days from the date of the hearing on the matter.~~

J. Record of Findings.

- ~~1. The Board of Adjustment and Appeals shall make written findings in any case of an appeal and shall state in the findings the reasons for its decision. The order issued by the Board of Adjustment and Appeals shall include the legal description of the land involved. Any such order shall be filed with the Zoning Administrator who shall immediately mail a copy of the order, bearing the notation of the filing date, to the appellant or applicant.~~
- ~~2. A certified copy of any order issued by the Board of Adjustment and Appeals acting upon any appeal from an decision, order, requirement, or determination of an administrative officer, may be filed with the County Recorder or Registrar of Titles for recording. The filing may be made by the Zoning Administrator as soon as is reasonably possible after the filing of the order with the Zoning Administrator.~~

ADMINISTRATION - VARIANCES

154.100 PURPOSE

The purpose of this section is to provide for deviations from the literal provisions of this Chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Chapter.

154.101 BOARD OF ZONING ADJUSTMENTS AND APPEALS

The City Council shall act as the Board of Zoning Adjustments and Appeals.

154.102 REVIEW CRITERIA

(A) The Board and Zoning Administrator shall not approve any variance application (major or minor) unless they find failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met:

(1) That because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(2) That the conditions upon which a petition for a variation is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(3) That the purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the parcel of land.

(4) That the alleged difficulty or hardship is caused by this Chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(5) That the granting of the variation will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(6) That the proposed variation 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, or substantially diminish or impair property values within the neighborhood.

(7) That the requested variance is the minimum action required to eliminate the hardship.

154.103 MINOR VARIANCE

(A) Purpose. The purpose of this section is to provide for an expeditious method of processing variance requests which are defined as minor.

(B) Qualification.

(1) Cases where hardship to existing buildings or platted property is created as a result of public action or change in ordinance standards.

(2) Structure or setback deviations which are characteristic of and common to neighboring uses and which do not exceed a twenty-five (25) percent departure from any standard of this Chapter as applied to a specific piece of property.

(3) A minor variance procedure shall not be applicable or include any proposals involving signage, fencing, shoreland, wetland, or floodplain.

(C) Procedure

(1) Requests for a minor variance shall be filed with the Zoning Administrator on an official application form. The applicant's signature shall be provided on the application form. Additionally, if the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by a fee as set forth by the City Code. This fee shall not be refunded. The application shall be considered as being officially submitted complete when the applicant has complied with all the specified informational requirements, which shall include the following:

(a) A written description of the request for the minor variance, including an explanation of compliance with the variance criteria set forth in this section.

(b) Supporting materials, as outlined in Section ## of this Chapter, as determined by the Zoning Administrator as applicable to be necessary for the complete and clear definition and understanding of the request.

(c) Prior to approving an application for a variance (major or minor), the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the variance application relates.

(2) The Zoning Administrator shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.

(3) When appropriate, the Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports.

(4) The Board shall grant to the Zoning Administrator the right to approve the minor variance upon determining that the criteria outlined in Section ## have been satisfactorily met.

(5) Notice of such minor variance approval shall be sent by the Zoning Administrator to all adjoining property owners within two hundred (200) feet of the boundary of the property in question.

(6) The notice shall specify that any written objections to the approved minor variance be received by the Zoning Administrator within fourteen (14) days of the mailing. If any written objection of a substantive nature is received within fourteen (14) days and is unresolved between the author and the Zoning Administrator, the final approval of the requested minor variance, as well as any minor variance which is rejected by the Zoning Administrator, shall be referred to the Board and proceed according to the provisions of Section ## of this Chapter.

154.104 MAJOR VARIANCE

(A) Qualification.

All variances which are not classified as "minor" shall be deemed "major" variances.

(B) Procedure

(1) Requests for a major variance shall be filed with the Zoning Administrator on an official application form. The applicant's signature shall be provided on the application form. Additionally, if the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by a fee as set forth by the City Code. This fee shall not be refunded. The application shall be considered as being officially submitted complete when the applicant has complied with all the specified informational requirements, which shall include the following:

(a) A written description of the request for the major variance, including an explanation of compliance with the variance criteria set forth in this section.

(b) Supporting materials, as outlined in Section ## of this Chapter, as determined by the Zoning Administrator as applicable to be necessary for the complete and clear definition and understanding of the request.

(c) Prior to approving an application for a variance (major or minor), the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the variance application relates.

(2) Upon receipt of a complete application, as determined by staff review, and following preliminary staff analysis of the application and request, the Zoning Administrator, when appropriate, shall establish a time and place for consideration by the Planning Commission. At least ten (10) days before the date of the meeting, a written

notice of the meeting shall be mailed to the applicant and to all other owners of property located within two hundred (200) feet of the boundaries of the property which is the subject of the application.

(3) Failure of a property owner to receive notice shall not invalidate any such proceedings as set forth within this Chapter.

(4) The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the Board.

(C) Procedure – Planning Commission Review

(1) The Planning Commission and Zoning Administrator shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter.

(2) The applicant or a representative thereof may appear before the Planning Commission in order to present and answer questions concerning the proposed request.

(3) The Planning Commission shall make a finding of fact and make a recommendation on such actions or conditions relating to the request as they deem necessary to carry out the purpose of this Chapter. Such recommendations shall be in writing and accompanied by the report and recommendation of the City staff.

(D) Procedure – Board Review

(1) The Board shall not act upon the request until they have received a report and recommendation from the Planning Commission and the City staff or until sixty (60) days after the first regular Planning Commission meeting at which the request was considered.

(2) Upon receiving the report and recommendation of the Planning Commission and the City staff, the City Administrator shall schedule the application for consideration by the Board. Such reports and recommendations shall be entered in and made part of the permanent written record of the Board meeting.

(3) Upon receiving the report and recommendation of the Planning Commission and the City staff, the Board shall have the option to set and hold a public hearing if deemed necessary and shall make a recorded finding of fact and may impose any condition they considered necessary to protect the public health, safety and welfare.

(4) If, upon receiving said reports and recommendations of the Planning Commission and City staff, the Board finds that specific inconsistencies exist in the review process and thus the final determination of the Board will differ from that of the Planning Commission, the Board may, before taking final action, refer the matter back to the Planning Commission for further consideration. The Board shall provide the Planning Commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.

(5) Approval of a request shall require passage by a majority vote of the entire Board.

(6) In granting any major variance under the provisions of this section, the Board shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulations or provisions to which the adjustment or variance is granted, as to light, air, and the public health, safety, comfort, convenience and general welfare.

(7) In all cases where major variances are granted under the provisions of this section, the Board shall require such evidence and guarantee as it may deem necessary to insure compliance with the conditions designated in connection therewith.

(8) The Zoning Administrator shall serve a copy of the final order of the Board upon the petitioner by mail.

(9) Whenever an application for a major variance has been considered and denied by the Board, a similar application for a variance affecting substantially the same property shall not be considered again by the Planning Commission or Board for at least six (6) months from the date of its denial; and a subsequent application affecting substantially the same property shall likewise not be considered again by the Planning Commission or Board for an additional six (6) months from the date of the second denial unless a decision to reconsider such matter is made by a majority vote of the full Board.

154.105 APPEAL OF BOARD RULING

Any person or persons, any private or public board, or taxpayer of the City aggrieved by any decision of the Board shall have the right to seek review of the decision with a court of record in the manner provided by the laws of the State of Minnesota, and particularly Minnesota Statutes, Chapter 462, as such statutes may be from time to time amended, supplemented or replaced.

154.106 EXPIRATION

(A) Unless the City Council specifically approves a different time when action is officially taken on the request, variance approvals shall become null and void one (1) year after the date of approval without further action by the Planning Commission or the Board, unless the property owner or applicant has substantially started the construction of

any building, structure, addition or alteration, or use requested as part of the variance. The property owner or applicant shall have the right to submit an application for time extension in accordance with this section.

(B) An application to extend the approval of a variance shall be submitted to the Zoning Administrator not less than thirty (30) days before the expiration of said approval. Such an application shall state the facts of the request, showing a good faith attempt to utilize the permit, and it shall state the additional time being requested to begin the proposed construction. The application shall be heard and decided by the City Council prior to the lapse of approval of the original request.

(C) In making its determination on whether an applicant has made a good faith attempt to utilize the variance, the City Council shall consider such factors as the type, design and size of the proposed construction, any applicable restrictions on financing, or special and/or unique circumstances beyond the control of the applicant which have caused the delay.

154.107 SITE IMPROVEMENT PERFORMANCE AGREEMENT AND FINANCIAL GUARANTEE

Following the approval of a variance as required by this Section and prior to the issuing of any building permits or the commencing of any work, the applicant as may be applicable shall guarantee to the City the completion of all private exterior amenities as shown on the approved site plan and as required by the variance approval. The guarantee shall be made by means of a site improvement performance agreement and a financial guarantee as specified in Section ## of this Chapter.

~~300.06 Administration.~~

~~Subd. 3 Variances.~~

~~K. Decision, Appeals.~~

- ~~1. All decisions of the Board of Adjustment and Appeals acting upon an appeal from an order, requirement, decision, or determination by an administrative officer or upon an application for a variance shall be final except that any aggrieved person may have any decision or order of the board reviewed for an appropriate remedy in district court as provided by law.~~

ADMINISTRATION - APPEALS

154.120 BOARD DESIGNATIONS

The City Council shall serve as the Board of Adjustments and Appeals.

154.121 APPLICABILITY

An appeal shall only be applicable to an interpretation of legislative intent of provisions of this Chapter. Opinions and evaluations as they pertain to the impact or result of a request are not subject to the appeal procedure.

154.122 FILING

An appeal from the ruling of an administrative officer of the City shall be filed by the property owner or their agent with the Zoning Administrator within thirty (30) days after the making of the order being appealed.

154.123 STAY OF PROCEEDINGS

An appeal stays all proceedings and the furtherance of the action being appealed unless it is certified to the Board of Adjustment and Appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate a stay would cause imminent peril to life and property. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by a court of record on application, and upon subsequent notice to the City.

154.124 PROCEDURE

The procedure for making such an appeal shall be as follows:

(A) The property owner or their agent shall file with the Zoning Administrator a notice of appeal stating the specific grounds upon which the appeal is made. Said application shall be accompanied by a fee set forth in the City Code.

(B) The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports when appropriate and shall provide general assistance in preparing a recommendation on the action to the Board of Adjustment and Appeals.

(C) The Board of Adjustment and Appeals shall make its decision by resolution within sixty (60) days from the date on which a completed application is filed.

(D) The Zoning Administrator shall serve a copy of the final order of the Board upon the petitioner by mail.

154.125 APPEALS FROM THE BOARD OF ADJUSTMENT AND APPEALS

Any person or persons, any private or public board, or taxpayer of the City aggrieved by any decision of the Board of Adjustment and Appeals shall have the right to seek review of the decision with a court of record in the manner provided by the laws of the State of Minnesota, and particularly Minnesota Statutes, Chapter 462, as such statutes may be from time to time amended, supplemented or replaced.

300.06 Administration.

Subd. 6 Fees.

~~The Council, from time to time, shall establish by resolution the fees to be collected for all applications under this section. The fees shall include, in any case, those costs incurred by the City for consultants, legal and administrative fees.~~

FEES - Postponed

CERTIFICATE OF OCCUPANCY

154.150 ADMINISTRATION AND ENFORCEMENT

The Building Official of the City shall not issue a building permit or Certificate of Occupancy as to any property, building or structure where the use thereof by the applicant requires a conditional use permit or variance pursuant to 401.01 et. seq. of the Code of Ordinances of the City of Lake Elmo, until directed to issue the same by the City Council.

154.151 PENALTIES, VIOLATION AND ENFORCEMENT

The City Council may, from time to time, by resolution, impose reasonable fees for the inspection of buildings, property or structures to assure compliance with the terms and provisions of the conditional use permits and/or variances which have been applied for and obtained from the City.