

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

ORDINANCE NO. 08-047

**AN ORDINANCE AMENDING THE ADMINISTRATIVE
SECTION OF THE ZONING ORDINANCE TO REVISE THE
VARIANCE REQUIREMENTS BASED ON RECENT
AMENDMENTS TO MINNESOTA STATE STATUTES**

SECTION 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to *add* the following definition:

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.

SECTION 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby changed to *amend or eliminate* the following definitions as shown:

~~———— **HARDSHIP.** The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city’s zoning regulations and no other reasonable alternative use exists; that the plight of the landowner is due to the 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; and that these unique conditions of the site were not caused or accepted by the landowner after the effective date of the city’s zoning regulations.~~

SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by amending the following language:

§ 154.017 VARIANCES.

~~(A) *Hardship.* A request for variance from the literal provisions of this chapter may be granted in instances where their strict enforcement would cause undue hardship. An **UNDUE HARDSHIP** means that the property cannot be put to reasonable use if used under the conditions allowed by the zoning code; that the plight of the landowner is due to circumstances unique to the property and not created by the landowner, and that the variance, if granted, will not change the essential character of the neighborhood. Economic considerations alone shall not constitute a hardship. The City Council may not permit as a variance any use that is not permitted under this chapter for property in the~~

zone where the affected person's land is located.

~~— (B) *Temporary use variance.* A variance may be permitted for the temporary use of a 1 family dwelling as a 2 family dwelling, provided that:~~

~~— (1) *Prior existence.* The dwelling has existed for at least 10 years, and the multiple use existed before the adoption of this code; and~~

~~— (2) *Septic.* The septic system meets or exceeds current septic system regulations.~~

~~— (C) *Application.* An application for a variance shall be filed with the Zoning Administrator.~~

~~— (1) 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 chapter.~~

~~— (2) The application shall contain sufficient information to determine whether the proposed variance will meet all applicable development standards if the variance is granted. In all cases, the completed 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 person that has 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; and~~

~~— (h) A list of the abutting property owners~~

~~— (4) *Planning Commission review.*~~

~~— (a) The Zoning Administrator shall, upon the filing of a completed~~

application for a variance, refer the matter to the Planning Commission.

~~_____ (b) 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 served on the person by mail, provided the notice shall be mailed at least 10 days preceding the date of the hearing.~~

~~_____ (c) The Planning Commission shall make written findings for all variance applications and shall state in the findings the reasons for its recommendation to the City Council.~~

~~_____ (d) The Planning Commission may recommend to the City Council conditions if granting of a variance which may reasonably be determined to be necessary to protect adjacent properties, preserve the public health, safety, and welfare, and comply with the intent and purposes of this chapter. The Planning Commission may also recommend conditions and requirements deemed necessary to ensure compliance with the terms of the variance.~~

~~_____ (5) City Council action. The City Council shall receive the recommendation of the Planning Commission and shall take final action on the variance request within 60 days of the city's receipt of a completed application, unless the review period is otherwise extended pursuant to the applicable state regulations.~~

(A) In General. The Board of Adjustment (which is the City Council in accordance with Section 31.10 of the City Code) 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 Section 154.017, Subd. E.

(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. An application for a variance shall be submitted to the Zoning Administrator and accompanied by such information as follows:

(1) Name and address of the applicant;

(2) The legal description of the property involved in the request for variance, including the street address, if any, of the property;

- (3) The name and address of the owners of the property and any other person that has a legal interest in the property. The applicant shall supply proof of ownership of the property for which the variance is requested, consisting of an abstract of title or registered property certificate, certified by a licensed abstractor, together with any unrecorded documents whereby the petitioners acquired legal or equitable ownership;
- (4) A site plan drawn to scale or a certified survey if required by the City showing:

 - i. Property dimensions;
 - ii. Locations of all existing and proposed buildings and their size, including square footage;
 - iii. Existing and proposed septic systems;
 - iv. Curb cuts, driveways, access roads, parking spaces, off-street loading areas, and sidewalks; and
 - v. Other information as deemed necessary for the request.
- (5) The variance requested and the reasons for the request; and
- (6) The application form shall be accompanied by an accurate list showing the names and the mailing address of the record owners of all property within a minimum of 350 feet of the property for which the variance is sought; verified as to accuracy by the applicant.
- (D) Review Requirements. The Planning Commission shall hold a public hearing on each complete application for a variance with the following procedure:

 - (1) The Zoning Administrator shall, upon the filing of a completed application for a variance, refer the matter to the Planning Commission.
 - (2) The Zoning Administrator shall notify the applicant and the applicable property owner(s) of the time and place of the hearing. The notice shall be served on the person by mail, provided the notices shall be mailed at least 10 days preceding the date of the hearing.
 - (3) The Planning Commission shall make written findings for all variance applications and shall state in the findings the reasons for its recommendations to the Board of Adjustment.
 - (4) The Planning Commission may recommend to the Board of Adjustment conditions if granting of a variance which may be reasonably determined to be necessary to protect adjacent properties, preserve the public health, safety, and welfare, and comply with the intent and purposes of this chapter. The Planning Commission may also recommend conditions and

requirements deemed necessary to ensure compliance with the terms of the variance.

(5) 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.

(E) 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.

i. 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 plight of the landowner is due to circumstances unique to the property not created by the landowner

(3) Character of locality. The proposed variance will not alter the essential character of the locality in which the property in question is located.

(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.

(F) Conditions. The Board of Adjustment may impose such restrictions, conditions, and mitigating requirements 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.

(G) Effect of denial. No application by a property owner for a variance shall be submitted to the Board of Adjustment within a six (6) month period following a denial of such a request unless, in the opinion of the Board, new evidence of change in circumstances warrant it.

(H) 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 consecutive months.


(I) 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.

SECTION 4. Effective Date

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

SECTION 5. Adoption Date

This Ordinance No. 08-047 was adopted on this 5th day of July 2011, by a vote of 5 Ayes and 0 Nays.



Mayor Dean A. Johnston

ATTEST:



Bruce Messelt
City Administrator

This Ordinance No 08-047 was published on the ____ day of _____, 2011