

Part III.

An amendment to the Clay County Development Code, Title 8 of the Clay County Code as it relates to variances.

The following sections of the Clay County Development Code are amended in the following ways:

Definitions:

8-8-2: VARIANCE:

VARIANCE: A modification of a specific permitted development standard required in an official control, including this Ordinance, to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a ~~hardship~~, practical difficulty or unique circumstance, but not including a use not ~~permitted~~ **allowed** in the applicable **zoning** district.

8-4-5: VARIANCES:

- A. Power to Authorize:** The Board of Adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this Ordinance as will not be contrary to the public interest and only for those circumstances provided for in Minnesota Statutes Annotated chapter 394.
- B. Findings Require Specific Conditions:** In the granting of such variance, the Board of Adjustment shall clearly identify in writing the specific conditions that exist consistent with the criteria specified in Minnesota Statutes Annotated Section 394.27 which justify the granting of the variance.
- C. Compliance with Statute:** The Board of Adjustment shall not grant a variance unless it finds at a public hearing that the standards of Minnesota Statutes Annotated section 394.27, subsection 7 have been met.
- D. Criteria for granting variances.** All of the following criteria must be met before a variance may be granted:
 - 1. Intent of Ordinance:** The variance ~~is in harmony with~~ **meets** the general purposes and intent of this Ordinance.
 - 2. Consistent with Comprehensive Plan:** The variance is consistent with the Clay County Comprehensive Land Use Plan.
 - 3. ~~Physical Hardship~~ Practical Difficulty:** ~~A variance may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the~~ **A variance may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the** ~~There are practical physical difficulties or particular physical hardships when the strict letter of this Ordinance. is imposed~~ **"Practical difficulties," as used in connection with the granting of a variance, mean the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. in** ~~question cannot be put to any reasonable use if used under the conditions allowed by this Ordinance. Agricultural use shall be considered a reasonable use. Economic considerations alone do not constitute practical difficulties. hardship alone shall not be considered sufficient hardship for granting a variance.~~ **Variances shall be granted**

for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls.

- 4. Extraordinary Circumstances:** Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property have had no control or influence.
- 5. Literal Interpretation Unfair:** The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
- 6. Minimum Variance Necessary:** The variance granted shall be the minimum variance that would alleviate the **practical difficulty**. ~~hardship~~
- 7. Prohibited Variances:** No variance shall be granted where any of the following conditions are present:
 - a. Adequate sewage treatment systems or water supply capabilities cannot be provided;
 - b. The plight of the landowner or **practical difficulty** ~~hardship~~ is due to circumstances created by the landowner;
 - c. The variance would allow a use **that is not allowed** ~~prohibited~~ in that **zoning** district;
 - d. The variance would result in a lower degree of flood protection than the Regulatory Flood Protection Elevation. Variances may be used to modify permissible methods of flood protection;
 - e. The essential character of the locality would be altered or there would be a significant adverse effect on the surrounding properties;
 - f. There would be a significant adverse effect on the public health or safety; or
 - g. No variance shall confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district.
- E. Conditions:** Conditions may be imposed in the granting of a variance ~~to ensure compliance and to protect adjacent properties and the public interest.~~ **A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.**
- F. Shoreland Districts:** For existing developments within the shoreland districts, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, as issued, must require reconstruction of a nonconforming sewage treatment system.
- G. Flood Insurance Notice and Record Keeping:** The Zoning Administrator shall notify the applicant for a variance that:
 - 1. Increased Costs:** The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and

- 2. Risks:** Such construction below the 100-year or regional flood level increases risks to life and property.
- 3. Record of Variances in Floodplains:** Such notification shall be maintained with a record of all variance actions. The County shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the Administrator of the National Flood Insurance Program.