

**Lanesboro Planning & Zoning Commission
Regular Meeting Agenda
Wednesday, June 17, 2026 – 6:00 p.m.
Lanesboro City Council Chambers**

Zoom is provided as a way to offer more accessibility to council and committee meetings.
However, due to potential technical issues, full functionality is not guaranteed.
<https://us02web.zoom.us/j/87349495987?pwd=ux3f20B2DvNEzVlV1rM0aZCKLgPhHw.1>
Meeting ID: 873 4949 5987 | Passcode: 833122

6:00 p.m. – Public Hearing

- Variance Application for Parcel ID 190300010: Request by Dawn Bearson for a variance from Lanesboro City Ordinance § 151.44 to increase the maximum allowable fence height from 4 feet to 6 feet to allow construction of a privacy fence in the side yard and rear yard at 603-1/2 Auburn Avenue South.
- Variance Application for Parcel ID 190247000: Request by Nancy Martinson for a variance from Lanesboro Ordinance § 151.21(3)(a) to reduce the required front yard set back from 30 feet to 2 feet to allow construction of an enclosed screen porch on the single-family residential dwelling at 302 Kirkwood Street East.

Call to Order

- A. Agenda Approval
Motion _____ **Second** _____
- B. Public Comments
- C. Consent Agenda
 - a. Minutes of Regular Meeting, April 15, 2026
Motion _____ **Second** _____

Continued Business

New Business

- A. Consider Variance Application for Parcel ID 190300010 – 603-1/2 Auburn Avenue South
Motion _____ **Second** _____
- B. Consider Building Permit Application for Parcel ID 190300010 – 603-1/2 Auburn Avenue South
Motion _____ **Second** _____
- C. Consider Variance Application for Parcel ID 190247000 – 302 Kirkwood Street East
Motion _____ **Second** _____
- D. Consider Building Permit Application for Parcel ID 190247000 – 302 Kirkwood Street East
Motion _____ **Second** _____
- E. Discuss Regulation of Data Centers

Next Meeting: Wednesday, July 15, 2026 at 6:00 p.m.

Adjourn Regular Meeting

Commissioners: Alicia Pearson, Michael Seiler, Jeff Lepper, Aaron Gage and Jonathan Levine

**Lanesboro Planning and Zoning Commission
Regular Meeting Minutes
Wednesday, April 15, 2026 – 6:00 p.m.
Lanesboro City Council Chambers**

Members Present:

Aaron Gage Jeff Lepper Jonathan Levine Alicia Pearson Michael Seiler

Staff:

Mitchell Walbridge Darla Taylor

Member Seiler called the regular meeting to order at 6:00 p.m.

Public Hearing: Simple Lot Split Application for Parcel ID 190398100 (811 Auburn Avenue South)

Member Seiler called the public hearing to order at 6:01 p.m.

Rick Lamon provided comments that he is favor of the lot split and that he feels that progress on meeting requirements of the application have gone well.

Member Seiler closed the public hearing at 6:04 p.m.

Public Hearing: Conditional Use Permit Application for Parcel ID 190205000 (109 Elmwood Street East)

Member Seiler called the public hearing to order at 6:04 p.m.

Michelle Leon provided comments that she is the applicant, and they have remained in compliance with Airbnb rules within the city. They have experienced some imposition with the use of the dwelling as a residence due to its construction. They would like to have four bedrooms utilized as short-term vacation unit use throughout the dwelling.

Member Seiler closed the public hearing at 6:07 p.m.

- A. Agenda Approval:** A motion was made by Member Pearson to approve the agenda; Member Levine seconded the motion. All members voted in favor; motion carried.
- B. Appoint Commission Chairperson for 2026:** A motion was made by Member Lepper to appoint Michael Seiler as chairperson of the commission for 2026; Member Levine seconded the motion. All members voted in favor; motion carried.
- C. Appoint Commission Vice Chairperson for 2026:** A motion was made by Member Levine to appoint Jeff Lepper as vice chairperson of the commission for 2026; Member Seiler seconded the motion. All members voted in favor; motion carried.
- D. Public Comments:** No public comments were shared.
- E. Consent Agenda:**
 - a. Minutes of Regular Meeting, December 17, 2025**
A motion was made by Member Lepper to approve the Consent Agenda; Member Pearson seconded the motion. All members voted in favor; motion carried.

New Business

- A. Consider Simple Lot Split Application for Parcel ID 190398100 (811 Auburn Avenue South):**
Zoning Administrator Walbridge explained that Richard and Cheryl Lamon submitted a simple lot split application to split their property at 811 Auburn Avenue South into two lots. The proposed lot to be created would be landlocked, so Administrator Walbridge recommended approval be contingent upon the receipt of a private utility service easement for both water and sewer services and an access easement as the parcel would be landlocked. Having these contingencies would be adequate to have the City Council waive the ingress and egress requirements established by City Ordinance § 151.21(E)(5). A motion was made by Member Seiler to recommend the City Council approve the application; Member Lepper seconded the motion. Administrator Walbridge recommended the commission consider

amending the motion to add the easement contingencies as part of the recommendation to the City Council. A motion was made by Member Lepper to amend the original motion to include the easement contingencies; Member Levine seconded the motion. All members voted in favor of the amendment; motion carried. On the amended motion, all members voted in favor; motion carried.

B. Consider Simple Lot Split Application for Parcel ID 190398100 (109 Elmwood Street East):

Administrator Walbridge explained the property owner at 109 Elmwood Street East is seeking a conditional use permit to allow the entire residential dwelling to be used for short-term vacation rentals. Administrator Walbridge stated that this would not be permissible as a conditional use per the zoning regulations in City Ordinance § 151.22. Administrator Walbridge recommended that the application be denied.

A motion was made by Member Seiler to recommend the City Council deny the application; Member Levine seconded the motion. During discussion, members brought up the R-2 Multiple Family Residential zone that exists up the 100 block of Elmwood Street East. Members cited that the applicant may be able operate short term vacation lodging if the property were zoned to C-1 Downtown Commercial District. Administrator Walbridge cautioned that the motion should be evaluated based on the contents of the application in the form of a conditional use permit. All members voted in favor; motion carried.

A motion was made by Member Seiler to adjourn the meeting; Member Levine seconded the motion. All members voted in favor; motion carried.

The meeting adjourned at 6:23 p.m.

Respectfully submitted,

Mitchell Walbridge
City Administrator/Clerk

Building Permit Application

Required Submittal Information

1. Site plan including distances from other structures, property lines, public streets, easements, and septic tanks.
2. Drawings with specifications of the type of structure.
3. Other information may be required depending on the scope of work.

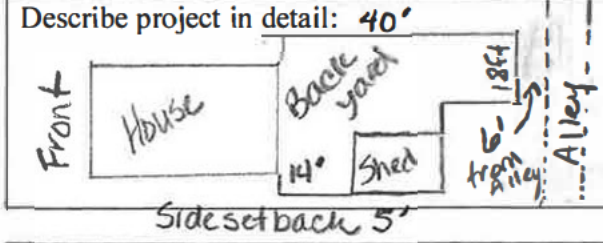
Site Address: 603 1/2 Auburn Ave S Lanesboro MN

Parcel ID: 190300010

Applicant (select one): Property Owner Contractor/Professional Other: Parent (renter)

Scope of Work

Describe project in detail: 40'



Privacy fence 6ft tall Approx 110 linear ft
The drawing is not to scale

Property Owner

Full Name: Amanda Bearson Phone: [REDACTED] (my number [REDACTED])
Email: [REDACTED] email- [REDACTED]
Address: 224 Thompson Ave St Paul MN

General Contractors/Professionals

Company Name: Apex Fence Phone: 507-993-2744
Contact Name: Kevin Hermanson State License Number: IR-759067
Address: 5 80th St SE, ROCHESTER, MN 55904

Company Name: _____ Phone: _____
Contact Name: _____ State License Number: _____
Address: _____

Architect/Designer/Engineer

Company Name: _____ Phone: _____
Contact Name: _____
Address: _____

Project Descriptions

Residential (new)	Commercial (new)
<input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Single Family <input type="checkbox"/> Two Family <ul style="list-style-type: none"> <input type="radio"/> Duplex <input type="radio"/> Townhome <input type="radio"/> Condo <input type="checkbox"/> Multi-Family (3+ units) <input type="checkbox"/> Garage slab only <input type="checkbox"/> Garage <ul style="list-style-type: none"> Number of Vehicle Stalls: _____ <input type="radio"/> Attached <input type="radio"/> Detached Dimensions: _____ Height: _____ Valuation: _____	<input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Church/Religious <input type="checkbox"/> Hotel/Motel <input type="checkbox"/> Industrial/Warehouse <input type="checkbox"/> Office/Bank <input type="checkbox"/> Parking Garage <input type="checkbox"/> Public Works/Utilities <input type="checkbox"/> Recreational <input type="checkbox"/> School/Educational <input type="checkbox"/> Service/Repair Station <input type="checkbox"/> Retail/Customer Services <input type="checkbox"/> Other: _____
<p align="center">Residential (existing)</p> <input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Deck <input type="checkbox"/> Addition <input type="checkbox"/> Alteration <input type="checkbox"/> Garage Addition <ul style="list-style-type: none"> Number of Vehicle Stalls: _____ <input type="checkbox"/> Demolition <input type="checkbox"/> Re-Side <input type="checkbox"/> Re-roof <input type="checkbox"/> Windows/Door Replacement <input type="checkbox"/> Retaining Wall Fence Dimensions: _____ Height: _____ Valuation: <u>\$12,000</u>	<p align="center">Commercial (existing)</p> <input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Addition <input type="checkbox"/> Alterations <input type="checkbox"/> Re-roof <input type="checkbox"/> Windows/Door Replacement <input type="checkbox"/> Demolition

<p align="center">Miscellaneous</p> <input type="checkbox"/> Nonresidential building (accessory structure)	<input checked="" type="checkbox"/> Structures other than buildings (fences, pools, retaining walls, carport)
<input type="checkbox"/> Other: _____	

Disclaimer and Signature

I hereby apply for a building/zoning permit, and I acknowledge that the information above is complete and accurate; that the work will be in conformance with the ordinances of the City of Lanesboro and with Minnesota Building Codes; that I understand this is not a permit, but only an application for a permit, and work is not to start without a permit; and that the work will be in accordance with the approved plan in the case of work which requires a review and approval of plans.

Applicant Signature: *Dawn Bevis*

Date: *5/26/2026*

Zoning Review

Application Fee: _____

Zoning District: _____ Site Plan: _____ Acres: _____

Required Setbacks: Front _____ Side _____ Rear _____ Side Street _____

Comments:
\$150.00

Zoning Administrator: _____

Date: _____

CITY OF LANESBORO
VARIANCE APPLICATION

A. Applicant's Name:

Dawn Bearson

Telephone

Home:

Work/Cell:



B. Address (Street, City, State, ZIP):

603 1/2 Auburn Ave. S.

C. Property Owner's Name (If different from above):

Amanda Bearson

Telephone

Home:

Work/Cell:



D. Location of Project:

Backyard

E. Legal Description:

Lanesboro First Addition, Lot 3 of Block 47

F. Description of Proposed Project:

6ft. privacy fence

G. Specify the section of the ordinance from which a variance is sought:

151.44

H. Explain how you wish to vary from the applicable provisions of the ordinance:

From 4ft fence to 6ft fence

I. Please attach a site plan or accurate survey as may be required by ordinance.

See building permit

J. Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance? yes

Yes (X) No () Why or why not?

privacy fence for residential district

2. In your opinion, is the variance consistent with the comprehensive plan?

Yes (X) No () Why or why not?

privacy fence for residential district

3. In your opinion, does the proposal put property to use in a reasonable manner?

Yes (X) No () Why or why not?

Privacy for back yard

4. In your opinion, are there circumstances unique to the property?

Yes (X) No () Why or why not?

There is a lot of traffic in our alley i.e. tourists, dogwalkers, walkers etc.

5. In your opinion, will the variance maintain the essential character of the locality?

Yes (X) No () Why or why not?

Neighbor has a fence that will align with this one

The Planning Commission must make an affirmative finding on all of the five criteria listed above in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The undersigned certifies that they are familiar with application fees and other associated costs, and also with the procedural requirements of the City Code and other applicable ordinances.

Applicant's Signature:

Date:

Dawn Beason

5/26/2024

Fee Owner's Signature:

Date

CITY OF LANESBORO
VARIANCE APPLICATION

A. Applicant's Name:

NANCY MARTINSON

Telephone

Home:

Work/Cell:



B. Address (Street, City, State, ZIP):

302 Kirkwood St E Lanesboro

C. Property Owner's Name (If different from above):

same

Telephone

Home:

Work/Cell:



D. Location of Project:

302 Kirkwood St E

E. Legal Description:

Lanesboro Original Plat, Lots 3-4 of Block 36

F. Description of Proposed Project:

screened porch

G. Specify the section of the ordinance from which a variance is sought:

set back variance 151.21 (3) (a) Front yard

H. Explain how you wish to vary from the applicable provisions of the ordinance:

along screen porch to match existing structural
set back
construct addition to dwelling within 2 feet of
front yard property line.

to construct within 2 feet of property line.

I. Please attach a site plan or accurate survey as may be required by ordinance.

J. Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance?

Yes (X) No () Why or why not?

Yes because the new screen porch wouldn't extend any further than the current front of the house (See photo of house & plan for screen porch.)

2. In your opinion, is the variance consistent with the comprehensive plan?

Yes (X) No () Why or why not?

Yes, I want the screen porch for safety reasons. I have developed a severe allergy to wasps. (2 ambulance calls) I want to enjoy the outdoors without getting stung.

3. In your opinion, does the proposal put property to use in a reasonable manner?

Yes (X) No () Why or why not?

Yes, it stays consistent with the front of the house adding the screen porch and another cottage style garden to enhance the neighborhood.

4. In your opinion, are there circumstances unique to the property?

Yes (X) No () Why or why not?

Yes, the screen porch will add another outdoor area to enhance the property.

5. In your opinion, will the variance maintain the essential character of the locality?

Yes (X) No () Why or why not?

Yes, the screen porch variance will maintain the cottage style of the house in the neighborhood.

The Planning Commission must make an affirmative finding on all of the five criteria listed above in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The undersigned certifies that they are familiar with application fees and other associated costs, and also with the procedural requirements of the City Code and other applicable ordinances.

Applicant's Signature:

Nancy Martinson

Date:

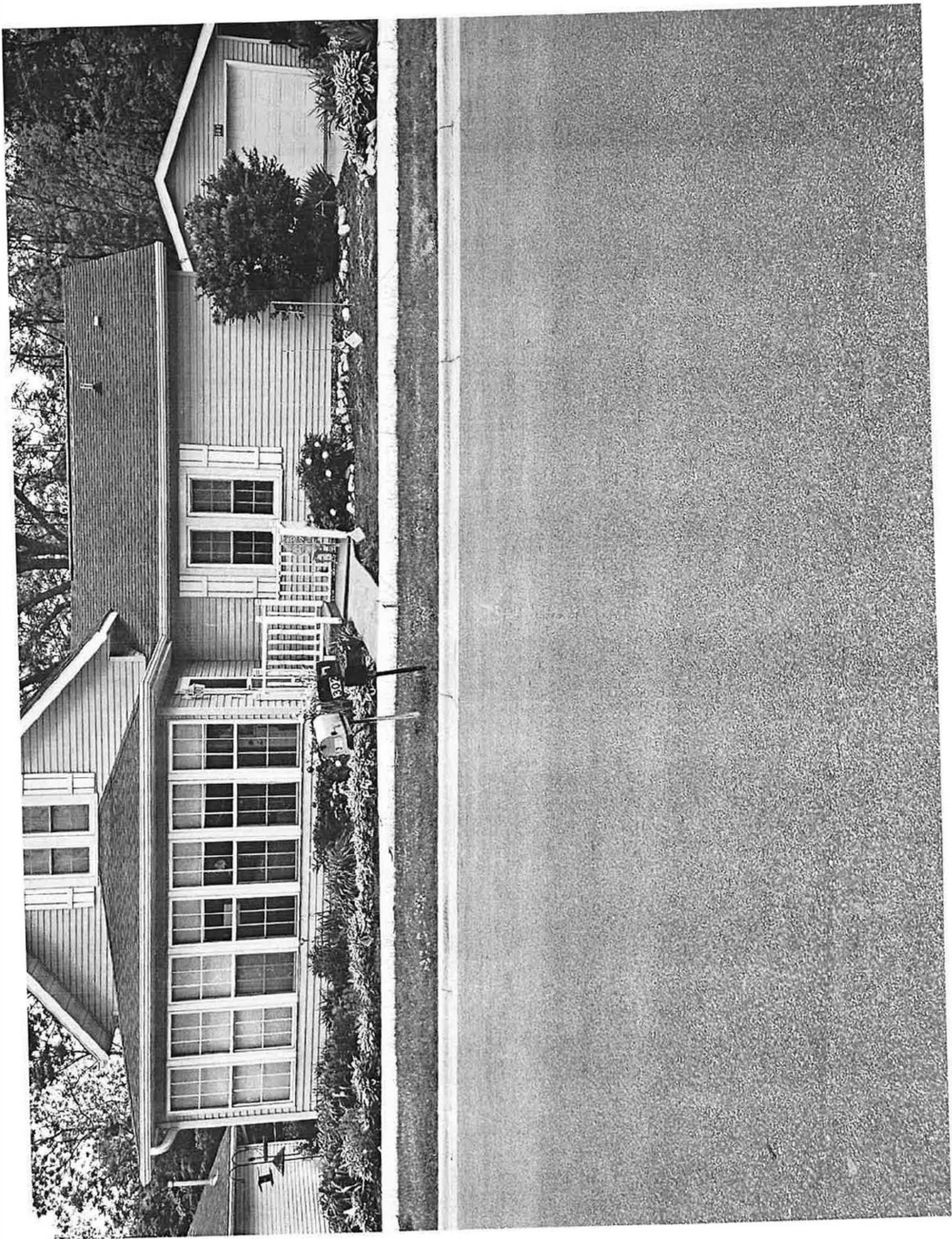
6/1/26

Fee Owner's Signature:

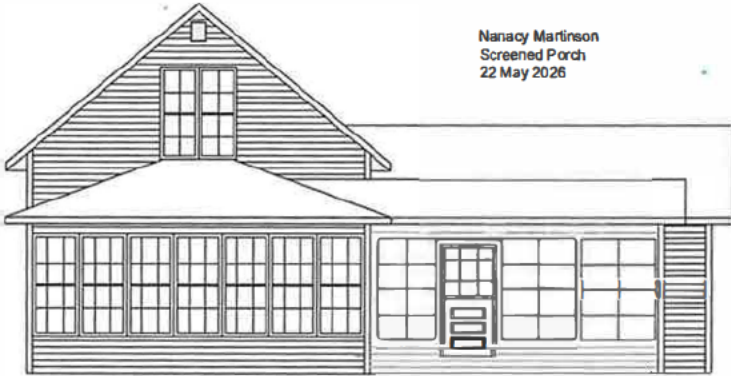
Nancy Martinson

Date:

6/1/26



Nanacy Martinson
Screened Porch
22 May 2026



Building Permit Application

Required Submittal Information

1. Site plan including distances from other structures, property lines, public streets, easements, and septic tanks.
2. Drawings with specifications of the type of structure.
3. Other information may be required depending on the scope of work.

Site Address: 302 Kirkwood St E. Lanesboro, MN

Parcel ID: R19.0247.000

Applicant (select one): Property Owner Contractor/Professional Other: _____

Scope of Work

Describe project in detail:

Screen porch

Property Owner

Full Name: Nancy Martinson Phone: [REDACTED]

Email: [REDACTED]

Address: 302 Kirkwood St E.

General Contractors/Professionals

Company Name: _____ Phone: _____

Contact Name: Rich Nepstad State License Number: _____

Address: _____

Company Name: _____ Phone: _____

Contact Name: _____ State License Number: _____

Address: _____

Architect/Designer/Engineer

Company Name: _____ Phone: _____

Contact Name: Phil Dybing

Address: _____

Project Descriptions	
Residential (new)	Commercial (new)
<input type="checkbox"/> Footing/Foundation <input checked="" type="checkbox"/> Single Family <input type="checkbox"/> Two Family <ul style="list-style-type: none"> <input type="radio"/> Duplex <input type="radio"/> Townhome <input type="radio"/> Condo <input type="checkbox"/> Multi-Family (3+ units) <input type="checkbox"/> Garage slab only <input type="checkbox"/> Garage <ul style="list-style-type: none"> Number of Vehicle Stalls: _____ <input type="radio"/> Attached <input type="radio"/> Detached Dimensions: _____ Height: _____ Valuation: _____	<input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Church/Religious <input type="checkbox"/> Hotel/Motel <input type="checkbox"/> Industrial/Warehouse <input type="checkbox"/> Office/Bank <input type="checkbox"/> Parking Garage <input type="checkbox"/> Public Works/Utilities <input type="checkbox"/> Recreational <input type="checkbox"/> School/Educational <input type="checkbox"/> Service/Repair Station <input type="checkbox"/> Retail/Customer Services <input type="checkbox"/> Other: _____ Dimensions: _____ Height: _____ Valuation: _____
Residential (existing)	Commercial (existing)
<input checked="" type="checkbox"/> Footing/Foundation <input type="checkbox"/> Deck <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Alteration <input type="checkbox"/> Garage Addition <ul style="list-style-type: none"> Number of Vehicle Stalls: _____ <input type="checkbox"/> Demolition <input type="checkbox"/> Re-Side <input type="checkbox"/> Re-roof <input type="checkbox"/> Windows/Door Replacement <input type="checkbox"/> Retaining Wall Dimensions: <u>10'8" X 18'</u> Height: _____ Valuation: <u>\$10,000</u>	<input type="checkbox"/> Footing/Foundation <input type="checkbox"/> Addition <input type="checkbox"/> Alterations <input type="checkbox"/> Re-roof <input type="checkbox"/> Windows/Door Replacement <input type="checkbox"/> Demolition Dimensions: _____ Height: _____ Valuation: _____ Fire Sprinkler <input type="checkbox"/> Stand-alone <input type="checkbox"/> Multiple Use Size of Structure _____ Certification Number _____
Miscellaneous	
<input type="checkbox"/> Nonresidential building (accessory structure) <input type="checkbox"/> Other: _____	<input type="checkbox"/> Structures other than buildings (fences, pools, retaining walls, carport)

Disclaimer and Signature

I hereby apply for a building/zoning permit, and I acknowledge that the information above is complete and accurate; that the work will be in conformance with the ordinances of the City of Lanesboro and with Minnesota Building Codes; that I understand this is not a permit, but only an application for a permit, and work is not to start without a permit; and that the work will be in accordance with the approved plan in the case of work which requires a review and approval of plans.

Applicant Signature: Nancy Martinson

Date: 5/15/26

Zoning Review

Application Fee: 75.00 Pd 5-15-26 CK# 5984

Zoning District: _____ Site Plan: _____ Acres: _____

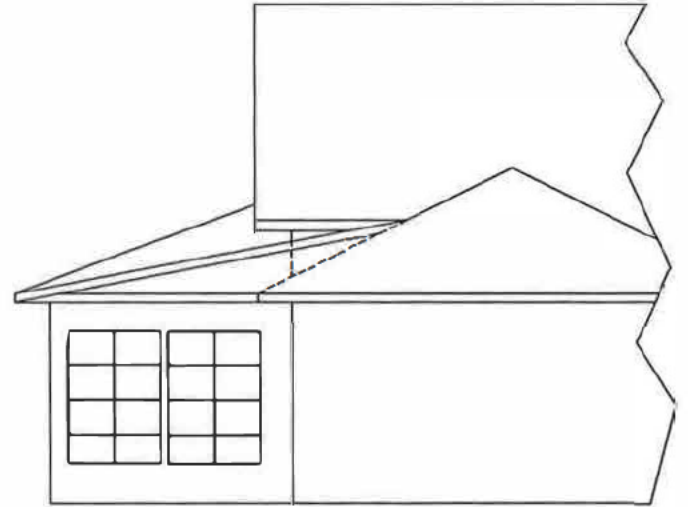
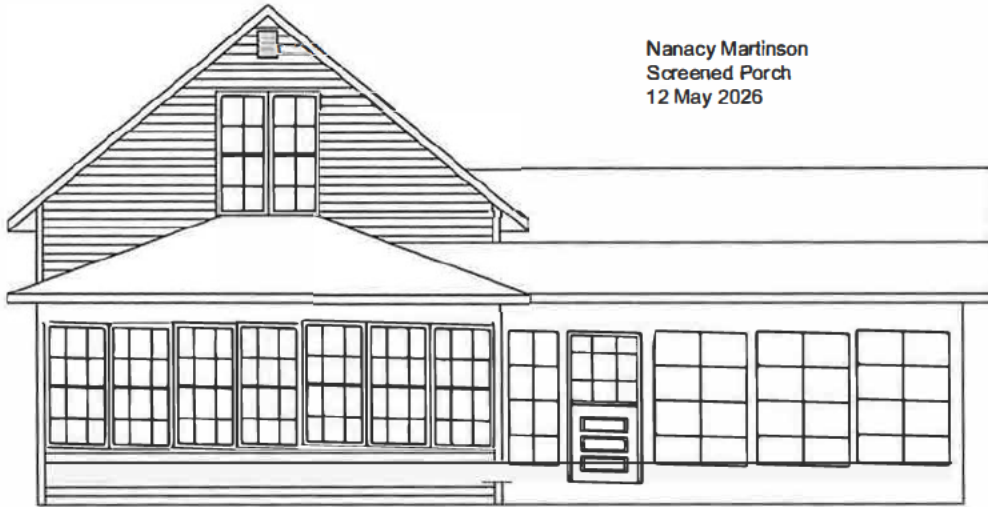
Required Setbacks: Front _____ Side _____ Rear _____ Side Street _____

Comments:

Zoning Administrator: _____

Date: _____

Nancy Martinson
Screened Porch
12 May 2026



Land Use Variances

Published: May 21, 2021

See accompanying model documents below.

This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.

What is a variance?

A variance is a way that cities may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner seeks a variance to allow a use of their property that is not permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota. State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located ([Minn. Stat. § 462.357, subd. 6](#)).

Granting a variance

Minnesota law provides for a body called the board of adjustment and appeals to hear requests for variances ([Minn. Stat. § 462.357, subd. 6](#)). In many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A city may grant a variance if enforcement of a zoning ordinance provision, as applied to a particular piece of property, would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when:

- They are in harmony with the general purposes and intent of the ordinance, and
- The terms of the variance are consistent with the comprehensive plan.

Legal standards

When considering a variance application, a city exercises “quasi-judicial” authority. This means the city acts like a judge in evaluating the facts against the legal standard. The city's role is limited to applying the legal standard of practical difficulties to the facts presented by the application. If the applicant meets the standard, then the city may grant the variance.

In contrast, when the city writes the rules in the zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

Practical difficulties

“Practical difficulties” is a legal standard that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner.

This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance.

It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner.

The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality.

Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law ([2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6](#)).

The 2011 law restored municipal variance authority in response to a Minnesota Supreme Court case ([Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010)). The law now does both of the following:

- Provides consistent statutory language between city land use planning statutes ([Stat. § 462.357, subd. 6](#)) and county variance authority ([Minn. Stat. § 394.27, subd. 7](#)).

- Clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of

- reasonableness
- uniqueness
- essential character

The League has developed models that reflect current variance law. Your city attorney should review these models with you prior to council action to tailor them for your city’s needs.

- [View the League model ordinance on issuance of a zoning variance \(doc\)](#).
- [View the League model variance application form \(doc\)](#).
- [View the League model resolution adopting findings of fact \(doc\)](#).

Other considerations

Harmony with other land use controls

State law says, “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan” ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

[For more about findings of fact, see *Taking the Mystery out of Findings of Fact*](#)

Economic factors

Sometimes landowners insist they deserve a variance because they have already incurred substantial cost. They may also argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). Rather, practical difficulties exist only when the three statutory factors are met.

Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request.

While city officials may feel their decision should reflect the overall will of the residents, their task is limited to evaluating how the variance application meets the statutory practical difficulties factors.

Residents can often provide important facts to help the city address these factors, but unsubstantiated opinions and reactions to a request are not a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, it could be overturned by a court if challenged.

Conditions

A city may impose conditions when it grants a variance. Conditions must be directly related to and bear a rough proportionality to the impact created by the variance (Minn. Stat. § 462.357, subd. 6). For instance, if a variance is granted to exceed a height limit, any conditions attached should presumably relate to lessening the effect of excess height.

Variance procedural issues

Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied. Many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not bound by decisions made for prior variance requests. If a city finds it is issuing many variances to a particular zoning standard, the city should consider amending the ordinance to change the standard.

Time limit

A written request for a variance is subject to Minnesota's 60-day rule. It must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval (Minn. Stat. § 15.99).

Documentation

Whatever its decision, a city should create a record that supports it.

If denying the variance, the 60-day rule requires the reasons for the denial be put in writing within the statutory time period (Minn. Stat. § 15.99, subd. 2). Even if the variance is approved, a written statement explaining the decision is advisable.

The written statement should address each of the three practical difficulties factors and list the relevant facts and conclusions for each factor.

For more about findings of fact, see *Taking the Mystery out of Findings of Fact*

Variances once granted

A variance is a property right that "runs with the land." That is, it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county

recorder. Even if the property is sold to another person, the variance applies.

Models used in this discussion:

- Issuance of Variances, LMC model ordinance (doc)
 - Variance Application, LMC model form (doc)
 - Adopting Findings of Fact, LMC model resolution (doc)
-

Your LMC Resource

Jed Burkett

Loss Control/Land Use Attorney

(651) 281-1247 or (800) 925-1122

jburkett@lmc.org