

Sec. 36-30. Interpretation; procedures.

(a) **Right of appeal.** At any time within 20 days after a written order, requirement, permit, decision, refusal, or determination by the zoning administrator has been made interpreting or applying this chapter, except for actions taken in connection with prosecutions for violation hereof, the applicant or any other person, officer, or department representative of the city affected by it may appeal the decision to the board of zoning appeals by filing a notice of appeal with the community development department addressed to the board of zoning appeals stating the action appealed from and stating the specific grounds upon which the appeal is made.

(b) **Setting a public hearing.** The city shall set a public hearing for the appeal by the board of zoning appeals to be held not less than ten days nor more than 45 days after it receives a notice of appeal. Notice of the hearing of the appeal before the board of zoning appeals shall be given by mail to all applicants. A notice of hearing shall be published in the official newspaper of the city at least ten days before the hearing date if the appeal involves the determination of boundary lines of a use district. Any interested party may appear at the public hearing in person or by agent or attorney. The decision of the board of zoning appeals shall be by resolution. A copy of the resolution of the board of zoning appeals shall be mailed to the applicant by the city clerk.

(c) **Board of zoning appeals to decide.** The board of zoning appeals shall determine by resolution all appeals from any written order, requirement, permit, decision, refusal, or determination of the zoning administrator; and from any interpretation of the text of this chapter, the location of the boundary of a use district as shown on the zoning map. The resolution shall be adopted by a majority vote of all members present and voting on the issues presented by the appeal. In making the decision, members of the board shall consider the questions raised in light of the general purpose of this chapter and the comprehensive plan.

(d) **Appeal to city council.** Any person aggrieved by a decision of the board of zoning appeals may appeal the decision in a manner provided in section 36-34.

(e) **Fee for appeal (interpretation).** A required fee established by resolution adopted by the city council shall be charged for all requests for appeal or interpretation of this chapter.

(Code 1976, § 14:8-1.0; Ord. No. 2462-15, 2-2-2015)

Sec. 36-31. Registration of land use.**(a) Approval required; exceptions.**

- (1) No person or business shall use or occupy any land or building within the city without first obtaining approval of a registration of land use for the proposed use.
- (2) Exceptions:
 - a. When a certificate of occupancy or certificate of property maintenance is issued as required by chapter 6 of this Code.

*Cross reference(s) --Administration, ch. 2.

- b. When a permitted office use replaces an existing office use, provided the total office area of the building does not change in size.

(b) Responsibility. Both the property owner and the lessee shall be responsible for securing the registration of land use required by this section.

(c) Application and information. The applicant shall provide the following information to determine compliance with this section:

- (1) Site address.
- (2) Present use.
- (3) Proposed use.
- (4) Size of use(s).
- (5) Site plan - if necessary.

(d) Approval of the registration of land use. The city shall approve the registration of land use provided that the use is legal per this chapter and complies with the comprehensive plan and all state codes and licensing requirements. Once the registration of land use has been approved, the use shall be permitted to occupy the land or building.

(e) Revocation of a registration of land use. Any false statement or factual material submitted to the city for approval of a registration of land use shall automatically revoke the registration of land use. After the city has determined that false information was received, the city shall notify the owner and lessee that the registration has been revoked. The notification shall also include that they have ten days to either obtain a new registration of land use or terminate use of the land or building. If the use continues without a valid registration of land use, both the landowner and tenant shall be guilty of violating this section.

(Code 1976, §§ 14:8-2.0--14:8-2.9; Ord. No. 2202-01, § 2, 8-20-2001; Ord. No. 2218-02, § 2, 2-4-2002; Ord. No. 2462-15, 2-2-2015)

Sec. 36-32. Planned Unit Development (PUD) District

(a) Purpose and Intent. The purpose of a PUD District is to benefit the city and its residents by providing a comprehensive procedure intended to allow greater flexibility in the development of land than would be possible under a conventional zoning district. The decision to zone property to PUD is a public policy decision for the City Council to make in its legislative capacity. The intent of this section is to:

- (1) Allow for the greater utilization of new technologies in building design, construction, and land development.
- (2) Promote higher standards of site and building design.
- (3) Promote a more efficient and effective use of streets, utilities, and public facilities to support high-quality development at a lesser cost.

- (4) Provide for the establishment of recreational, public, and open spaces which may be made more usable and be more suitably located than would otherwise be provided under conventional development procedures.
- (5) Allow modifications to the strict application of regulations of conventional zoning districts that are in harmony with the goals, policies and intent of the City's Comprehensive Plan and this chapter.
- (6) Encourage a more creative and efficient use of land.
- (7) Preserve and enhance desirable site characteristics, including flora and fauna, scenic views, screening and access.
- (8) Promote environmental sustainability in the development of land, building construction and building operations.
- (9) Ensure integrated pedestrian facilities to and within a PUD district.
- (10) Provide for improved connections to mass transit facilities.
- (11) Encourage an increase in the supply of low-income and moderate-income housing.
- (12) Allow for the mixing of land uses within a development when such mixing of land uses could not otherwise be accomplished under this Chapter.

(b) Building and site design. The City Council shall find that the quality of building and site design proposed by the PUD plan will substantially enhance aesthetics of the site and implement relevant goals and policies of the Comprehensive Plan before a PUD ordinance may be approved. In addition, the following criteria shall be satisfied:

- (1) The design shall consider the project as a whole, and shall create a unified environment within project boundaries by ensuring architectural compatibility of all structures, efficient vehicular and pedestrian circulation, aesthetically pleasing landscape and site features, and design and efficient use of utilities.
- (2) The design of a PUD shall achieve compatibility of the project with surrounding land uses, both existing and proposed, and shall minimize the potential adverse impacts of the PUD on surrounding land uses and the potential adverse effects of the surrounding land uses on the PUD.
- (3) A PUD shall comply with the City's Green Building Policy.
- (4) The use of green roofs or white roofs and on-site renewable energy is encouraged.
- (5) More than one building may be placed on one lot in a PUD.

(c) **Application of section provisions.** The provisions of this section shall be administered as follows:

- (1) *Land use guidance.* No PUD shall be approved on property guided by the Comprehensive Plan for low density residential development.
- (2) *PUD regulations.* A PUD district may incorporate the regulations of one or more other zoning districts as determined by the zoning administrator and designated in the ordinance creating the district.
- (3) *Modifications.* A PUD district may modify any provision of this Chapter except for the following:
 - a. PUDs with side or rear property lines adjacent to R-1 or R-2 zoned and used districts shall have a maximum building height of 40 feet, and minimum side and rear yards of 15 feet. Buildings may exceed 40 feet in height if the portion of the building above 40 feet is stepped back from the side and rear property lines a distance equal to the additional height.
 - b. PUDs shall comply with the requirements of the Floodplain Ordinance.
 - c. PUDs shall comply with the sign requirements of the most closely related zoning district as designated in the approving ordinance.
 - d. PUDs shall comply with the Travel Demand Management District.
- (4) *Permitted land uses.* Any land use that is consistent with the Comprehensive Plan may be allowed in a PUD district. Residential and non-residential uses may be included in a single PUD district. The PUD ordinance shall identify all land uses allowed in the PUD district. Any change from the uses listed in the PUD ordinance shall be considered an amendment to the PUD and shall follow the procedures specified in this section. The following uses are prohibited in a PUD: *Currency exchange; Firearms Sales; Pawnshop; Payday loan agency; Sexually Oriented Business*
- (5) *Minimum area.* A PUD district must consist of a parcel or contiguous parcels of land at least two acres or more in size. Tracts of less than two acres may be approved only if the applicant can demonstrate that a project of superior design can be achieved or that greater compliance with comprehensive plan goals and policies can be attained through use of a PUD.
- (5) *Additional Requirements.* PUDs shall be subject to the imposition of additional requirements when, in the opinion of the City Council, such additional requirements are necessary to protect the general welfare, public safety, neighborhood character and/or to achieve the objectives contained in Section 36-1.

(d) Submission requirements and procedure. Planned unit developments shall be proposed and considered according to the requirements of this section.

- (1) *Pre-Application Conference.* Before filing an application for approval of a PUD, an applicant may submit a concept plan for review and comment by City Staff. Staff may schedule a review of the concept plan by the Planning Commission and/or City Council to obtain nonbinding comments on its merits.
- (2) *Preliminary PUD Plan.* A complete application for a Preliminary PUD Plan shall include all of the following information:
 - a. An application and payment of required application fee.
 - b. A statement describing how the PUD will meet the stated purposes and objectives of this section.
 - c. If land encompassed within a proposed PUD is to be platted, replatted or subdivided, all information required for consideration and approval of a Preliminary Plat is also required in accordance with the subdivision ordinance, and the review may be carried out simultaneously with the review of a PUD.
 - d. A current certified survey showing existing conditions of properties located within the proposed PUD, and buildings and topography of properties located within 150 feet of the proposed PUD.
 - e. Preliminary general development plans. Plans shall be dimensioned and based on the survey. Plans shall show compliance to the City Code and proposed modifications.
 1. Detailed site plan.
 2. Landscape plan, including spaces used for designed outdoor recreation area (DORA)
 3. Tree preservation and replacement plan.
 4. Erosion control plan.
 5. Utility, drainage and storm water management plans prepared by a civil engineer registered in Minnesota.
 6. Lighting plan.
 7. Building elevations and floor plans.
 8. Fire protection plan.

- f. Traffic study containing, at a minimum, the total and peak hour trip generation from the site at full development, the effect of such traffic on the level of service of nearby and adjacent streets, intersections, and total parking requirements.
 - g. If a PUD has been requested that involves two or more phases, the PUD applicant shall submit a phasing plan. This plan shall demonstrate that each phase is capable of independently addressing and complying with the City Code, traffic study and storm water requirements and include the geographical sequence of construction and the number of dwelling units or square footage of nonresidential property to be constructed in each phase.
 - h. Environmental data which the City may deem necessary. This data must include a preliminary analysis of the probability of site contamination.
 - i. Any other information required by the City.
- (3) *Final PUD Plan.* A complete application for a Final PUD Plan shall contain all of the following information:
- a. An application and payment of required application fee.
 - b. A final plat that meets the requirements of the Subdivision Ordinance.
 - c. A current certified survey showing existing conditions of properties located within the proposed PUD, and buildings and topography of properties located within 150 feet of the proposed PUD.
 - d. Final general development plans. Plans shall be dimensioned and based on the survey. Plans shall show compliance to the City Code and proposed modifications.
 - 1. Detailed site plan.
 - 2. Landscape plan, including spaces used for designed outdoor recreation area (DORA)
 - 3. Tree preservation and replacement plan.
 - 4. Erosion control plan.
 - 5. Utility, drainage and storm water management plans prepared by a civil engineer registered in Minnesota.
 - 6. Lighting plan.
 - 7. Building elevations and floor plans.
 - 8. Fire protection plan.

- e. Any deed restrictions, covenants, agreements, and articles of incorporation and bylaws of any proposed homeowners' association or other documents or contracts which control the use or maintenance of property covered by the PUD.
 - f. A final phasing plan, if phasing is proposed, indicating the geographical sequence and timing of development of the plan or portions thereof, including the estimated date of beginning and completion of each phase.
 - g. Any other information required by the City.
- (4) *Procedure.* Planned unit developments shall be proposed and processed according to the requirements of this Section. No application for a Final PUD shall be processed until the application for a Preliminary PUD has been approved by the City Council unless the Zoning Administrator determines the Preliminary PUD and Final PUD may be processed simultaneously.
- a. *Preliminary PUD.*
 - 1. *Application.* An application for preliminary approval of a PUD district shall be on a form provided by the City and shall include all required information comprising a Preliminary PUD Plan.
 - 2. *Referral to Planning Commission.* The completed application shall be reviewed by City Staff and a report concerning the application shall be submitted to the Planning Commission.
 - 3. *Public Hearing.* The Planning Commission shall hold a public hearing in accordance with section 36-35(b).
 - 4. *Approval.* The City Council may approve the Preliminary PUD Plan in whole or in part, may approve subject to conditions, may deny, or may continue consideration of the Preliminary PUD Plan for further investigation and hearing at a later date.
 - 5. *Denial.* When a Preliminary PUD Plan has been denied by the City Council, the owner or applicant may not reapply for the same or similar development on the same property for the six-month period following the date of the denial.
 - b. *Final PUD.*
 - 1. *Application.* An application for final approval of a PUD district shall be on a form provided by the City and shall include all data and plans comprising a Final PUD Plan.

2. *Timeframe for Submission.* Application for a Final PUD shall be submitted for approval within 180 days after City Council approval of the Preliminary PUD unless a written request for a time extension is submitted by the applicant and approved by the City Council.
 3. The City Council shall consider the Final PUD Plan. If the City Council deems it necessary, it may set a public hearing for consideration of the Final PUD Plan. The City Council may deny the Final PUD Plan or may approve the Final PUD Plan in whole or in part. A Final PUD district shall be approved by ordinance.
 4. No development activity may occur on a site for which a PUD has been applied, until a Final PUD district has been approved in whole or in part for that site.
- c. *Preliminary and Final PUD combined.*
1. The application form for a Final PUD shall be used.
 2. The application shall include all data and plans comprising both a Preliminary PUD Plan and Final PUD Plan.
 3. The approval procedure shall be the same as for a Preliminary PUD, except that final approval shall be by ordinance.
- (5) *Development agreement.*
- a. The City may, at its sole discretion, require the owner and developer of a proposed PUD to execute a development agreement which may include, but not be limited to, all requirements of the Final PUD Plan as a condition to approval of a Final PUD.
 - b. The development agreement may require the developers to provide an irrevocable letter of credit in favor of the City, performance guarantee or cash escrow. The letter of credit shall be provided by a financial institution licensed in the state and acceptable to the City. The City may require that certain provisions and conditions of the development agreement be stated in the letter of credit. The letter of credit shall be in an amount sufficient to ensure the provision or development of improvement called for by the development agreement.
- (6) *Operating and maintenance requirements for common areas.* If certain land areas or structures within the PUD are designated for recreational use, public plazas, open areas or service facilities, the owner of such land and buildings shall enter into an agreement with the City that ensures the continued operation and maintenance of such areas or facilities in a manner suitable to the city.

- (7) *Zoning map.* All approved PUD districts shall be designated on the City's zoning map as it is revised from time to time.
- (8) *Building Permit.* No building permit shall be issued or development shall occur on land for which a PUD district has been approved which does not conform to the approved final plan.
- (9) *Amendments.* Proposed development of land for which a PUD has been approved or modifications to existing projects which does not conform to the approved final plan shall be processed as either an Administrative Amendment or Major Amendment as defined in this subsection as determined by the Zoning Administrator.
 - a. The Official Exhibits affected by the approved amendment shall be amended and replaced in their entirety.
 - b. *Administrative amendments.*
 - 1. Proposed changes to building dimensions involving ten percent or less of such dimension, proposed site modifications involving ten percent or less of the total existing site area, and proposed changes to other previously approved standards involving ten percent or less of such standard, which meet all ordinance requirements may be approved by the Zoning Administrator prior to a building permit being issued and shall not require planning commission review or council approval, unless otherwise stated in the approved development agreement.
 - 2. Administrative approval shall only be granted if the applicant has provided written notification to all owners of property within the PUD that such approval is being sought. The notification shall inform the property owners that approval of the proposed modification may be granted after ten calendar days have elapsed from the mailing date of the notice unless a property owner files an appeal with the Zoning Administrator within that time. If any such appeal is filed, the proposed modification shall be considered in the same manner as a major amendment to the approved final plan.
 - 3. Administrative approval may be obtained for modifications specified in the development agreement as requiring only administrative approval.
 - 4. The Zoning Administrator may determine that a proposed amendment is a Major Amendment, even if it meets the criteria of an Administrative Amendment, and shall follow the procedure for major amendments in this Subsection.

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- c. *Major amendments.* A major amendment to the approved final plan of the PUD shall be processed and approved in the same manner as a Preliminary and final PUD, except that submission requirements shall be modified as appropriate by City Staff to reflect the nature of the proposed amendment. Major amendments shall include:
 1. Any amendment that is not an Administrative Amendment.
 2. Any amendment determined to be a Major Amendment by the Zoning Administrator.
 3. Any amendment specified as such in the development agreement.

(10) *Final Development Plan governs use of land.* The subject area shall be permanently governed by the conditions, provisions and restrictions of the approving ordinance and final development plan. The ordinance and plan, as amended from time to time, shall govern the use of the land.

(Ord. No. 2462-15, 2-2-2015)

Sec. 36-33. Conditional Use Permits (CUP).

(a) Findings and Purpose: The city council may grant conditional use permits by resolution for uses and purposes authorized by this chapter, and may impose such additional conditions and safeguards in permits as may be necessary to protect the comprehensive plan and the general purpose and intent of this chapter.

(b) Standards and conditions. A conditional use permit shall be issued when the following findings are made:

- (1) *Consistency with plans.* It is consistent with and supportive of principles, goals, objectives, land use designations, redevelopment plans, neighborhood objectives, and implementation strategies of the comprehensive plan.
- (2) *Nuisance.* It is not detrimental to the health, safety, morals and general welfare of the community as a whole. It will not have undue adverse impacts on the use and enjoyment of properties, existing and anticipated traffic conditions, parking facilities on adjacent streets, and values of properties in close proximity to the conditional use.
- (3) *Compliance with code.* It is consistent with the regulations, intent and purpose of City Code and the zoning district in which the conditional use is located.
- (4) *Consistency with service capacity.* It will not have undue adverse impacts on governmental facilities, services or improvements which are either existing or proposed.
- (5) *Site design.* It is consistent with the design and other requirements of site and landscape plans prepared by or under the direction of a professional landscape architect or civil engineer registered in the state and adopted as part of the conditions imposed on the use by the city council.
- (6) *Consistency with utilities.* It is consistent with the City’s stormwater, sanitary sewer, and water plans.

- (7) *Conditions specific to site.* It complies with all conditions imposed by the City Council and listed within the conditional use permit.

(c) General Provisions:

- (1) *Conditional Use Permit required.* No building or land shall be used or occupied for a use which requires a conditional use permit until the permit has been issued.
- (2) *Compliance to conditions required.* No building or land shall be used or occupied for which a conditional use permit has been issued unless that use complies with all of the conditions of that conditional use permit.
- (3) *Referral to planning commission.* The request for a conditional use permit shall be referred to the planning commission for a public hearing and to study the effect of the proposed use on the comprehensive plan and on the character and development of the neighborhood. The planning commission shall recommend to the city council whether to grant or deny the conditional use permit request and the conditions which should be attached to the conditional use permit, if the recommendation is to approve the request.
- (4) *Action without planning commission recommendation.* If the planning commission does not transmit a recommendation to the City Council in a timely manner, then the city council may take action on the request without a recommendation of the planning commission.
- (5) *Reimbursement.* The conditional use permit shall become valid after the applicant has paid to the city all fees due according to section 36-36.
- (6) *Building permits.* Building permits shall not be issued for any property for which the city council has approved a conditional use permit until the applicant has met the conditions of the permit, paid to the city all required fees, has signed an assent form, and has filed with the city clerk any required letter of credit or other security.
- (7) *Major Amendment.* A major amendment to an existing conditional use permit is required when the proposed changes or modifications will have an effect on required parking, required yards, floor area ratios, ground floor area ratios, signage, building height, density, covenants or agreements required by the original conditional use permit, or changes in conditional use permits issued in the FW, FF or FP districts. A major amendment shall follow the same process required for an initial CUP application.
- (8) *Minor Amendment.* Any amendment to an existing conditional use permit not considered a major amendment as defined above may be approved by the City Council. The minor amendment shall follow the same process as an initial CUP application, except that a public hearing and planning commission review is not required.

(d) Process:

- (1) *Application.* All applications for conditional use permits shall be initiated by, or with the written consent of, the owners of the property. A complete application shall consist of:
 - a. An application and payment of required application fee.
 - b. A complete and accurate legal description of the property.

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- c. A written explanation of the request addressing the development proposal and the criteria listed in section (b) above.
 - d. A survey of the property showing all property lines, topography, structures and easements. Additional drawings showing site conditions and improvements as needed to show compliance with city regulations.
 - e. A dimensioned plan showing landscaping, parking, lighting, and other site design elements required to show compliance with City Code.
 - f. A dimensioned plan showing drainage, stormwater and utility plans prescribing locations for city water, sewer, fire hydrants, manholes, power, telephone, and cable lines, natural gas mains, and other service facilities prepared by a professional civil engineer registered in the state and adopted.
 - g. A dimensioned plan showing the floor plan and elevations for all existing and proposed structures.
 - h. A map or plat showing the lands proposed for the conditional use permit and all lands within 350 feet of the boundaries of the property and two copies of the names and addresses of the owners of the lands in the area as they appear on the records of the county auditor or other appropriate records.
 - i. Any other materials required by the city.
- (2) *Hearings.*
- a. The planning commission shall conduct a public hearing for all conditional use permit applications and major amendments to existing conditional use permits.
 - b. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the date of the hearing.
 - c. A notice of the hearing shall also be mailed at least ten days before the date of the hearing to each owner of the affected property and owners of record of property located wholly or partly within 350 feet of the property for which the conditional use permit has been requested.
 - d. The person responsible for mailing the notice shall use the records of the county auditor's office or other appropriate records to determine the names and addresses of owners entitled to written notice. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the person giving the notice and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with this section.
- (3) *Conditions.* The city council may impose reasonable conditions on any conditional use permit and may, at any time at its election or upon application by the property owner, modify the conditions of an existing conditional use permit as changing circumstances warrant.
- (4) *Modifications.* The City Council may initiate a modification of an existing conditional use permit. The modification shall follow the same process as required for a conditional use permit.

- (5) *Assent form.* A conditional use permit with imposed conditions is not valid until the applicant has signed an assent form and the approved exhibits which acknowledge the terms and conditions under which the conditional use permit is granted, agreeing to observe them.
- (6) *Filing.* The resolution approving a conditional use permit or modification of a conditional use permit shall include the legal description of the property for which the permit was issued. A certified copy of the resolution shall be filed with the appropriate filing officer at the county recorder or county registrar of titles.
- (7) *Extension of time.* The city council may grant an extension of time beyond the termination date for any conditional use permit. The fee to process an extension request shall be set by resolution adopted by the city council establishing such fees. At the time the extension is granted, the city council or the board of zoning appeals may waive the fee and direct the return of a part or all of it to the applicant. In considering whether to refund any of the fee charged, the city shall determine whether it has incurred additional expense in considering the request for extension. Requests for extension of time must be filed with the city manager before the termination date of the conditional use permit.
- (8) *Denial.* Conditional use permits may be denied by resolution of the city council. A resolution of denial shall constitute a finding by the city council that the conditions required for approval do not exist.

(Code 1976, §§ 14:8-3.0-14:8-3.4; Ord. No. 2167-00, 5-15-2000; Ord. No. 2238-03, 4-7-2003; Ord. No. 2276-04, 8-16-2004; Ord. No. 2409-12, 1-27-2012; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-34. Variances. The City may grant variances from the strict application of the provisions of the zoning ordinance in accordance with this section and state law.

(a) Standards and Provisions. While reviewing a variance application, the City shall consider the strict application of the provisions of this chapter and the requirements of all applicable state law.

- (1) Variances are not permitted for:
 - a. Any land use that is not allowed under the zoning ordinance for property in the zone where the affected person’s land is located.
 - b. Floor elevations lower than the flood protection elevation in the floodplain district.
- (2) The City may grant variances upon consideration of the following:
 - a. The effect of the proposed variance upon the health, safety and welfare of the community.
 - b. The request is in harmony with the general purposes and intent of the ordinance and,
 - c. The request is consistent with the comprehensive plan.

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- d. The applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. “Practical difficulties,” as used in connection with the granting of a variance, means that:
 1. The property owner proposes to use the property for a land use permitted in the zoning district in which the land is located. A variance can be requested for dimensional items required in the zoning ordinance, including but not limited to setbacks and height limitations;
 2. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and,
 3. The variance, if granted, will not alter the essential character of the locality.
 4. Economic considerations alone do not constitute practical difficulties.
 5. Practical difficulties include inadequate access to direct sunlight for solar energy systems.
 - e. There are circumstances unique to the property include the shape, topography, water conditions, or other physical conditions unique to the property; and,
 - f. The granting of the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and,
 - g. The granting of the variance will not impair an adequate supply of light and air to the adjacent property, unreasonably increase the congestion in the public streets, increase the danger of fire, or endanger public safety; and,
 - h. The granting of the variance will not merely serve as a convenience to the applicant but is necessary to alleviate a practical difficulty.
- (3) The City may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
 - (4) Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance.
 - (5) Variances involving a floodway, flood fringe and floodplain. If the application for a variance involves property within a floodway, flood fringe and floodplain district, a copy of all decisions granting variances shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action. In determining whether the property owner is proposing to use the property in a reasonable manner, the following additional variance criteria of the Federal Emergency Management Agency must also be satisfied:
 - a. Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

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- b. Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. No variance shall allow a lower degree of flood protection than the Regulatory Flood Protection Elevation.
- e. *Flood Insurance Notice and Record Keeping.* The Zoning Administrator shall notify the applicant for a variance that: (i) 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 \$25 for \$100 of insurance coverage and (ii)

Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. A community 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.

(b) Process. A request for a variance shall be considered by the board of zoning appeals. The City Council will act as the board of zoning appeals for variance requests made in conjunction with a conditional use permit or subdivision. The Planning Commission shall hold the public hearing on the variance request, review the variance request along with the conditional use permit or subdivision process, and report its findings and recommendations to the City Council.

(Ord. No. 2462-15, 2-2-2015)

- (1) *Applications.* All applications for variances shall be initiated by, or with the written consent of, the owners of the property. A complete application shall consist of:
 - a. An application and fee payment.
 - b. A written explanation of the request addressing the variance criteria in sections (b), (c) and (d) above.
 - c. A survey of the property showing all property lines, existing and proposed structures and easements.
 - d. A dimensioned plan showing the floor plan and elevations for all existing and proposed structures.
 - e. A map or plat showing the lands proposed for variance and all lands within 350 feet of the boundaries of that property and the names and addresses of the owners of the lands in the area as they appear on the records of the county auditor or other appropriate records.
 - f. Any other materials required by the city.

- (2) *Notice.* After receipt of a complete application, the city shall set a date for a public hearing before the board of zoning appeals for the variance request within 45 days after the application is received by the city. The Zoning Administrator shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed variances(s) occurring within a floodway, flood fringe or floodplain district sufficiently in advance so that the Commissioner will receive at least ten days' notice of the hearing.
- (3) *Hearings.* The public hearing shall be held after the required notice has been given. The board of zoning appeals shall hear arguments at the hearing for and against the proposed variance and it may continue that hearing if it is reasonably required. Final vote on the proposed variance shall be taken within 30 days after the public hearing is closed.
- (8) *Appeal to the city council.* Any owner of affected property or any owner of property situated wholly or partly within 350 feet of the affected property may appeal the decision of the board of zoning appeals to the city council. The appeal must be in writing and must be filed with the city clerk within ten calendar days after the date of the board of zoning appeals' decision. The required fee shall be paid to the city treasurer when the appeal request is filed. When an appeal is received by the city, the applicant will be notified of the date and time the city council will hear the appeal. No appeal will be heard until the city has notified all property owners within 350 feet of the subject property of the date scheduled for the appeal hearing. If no appeal is made within the ten-day period, the decision of the board of zoning appeals shall be final. If an appeal is taken from the decision of the board of zoning appeals, the city council shall hear the appeal within 30 days of the filing of the appeal unless that period is extended with consent of the appellant. The city council may reverse a decision of the board of zoning appeals by an affirmative vote of the majority of its full membership. The city council shall render a decision within 30 days concluding the appeal hearing. A decision of the board of zoning appeals shall not become effective until the end of the appeal period has expired. If an appeal is filed before the end of the appeal period the decision of the board of zoning appeals shall not become effective until the city council has rendered a decision on the appeal.
- (5) Any person who is denied a variance by the board of zoning appeals or whose appeal is denied by the city council may not reapply for the same variance within 24 months from the denial date unless the physical conditions of the property or land in question have changed. A change in the physical conditions would include, but is not limited to, a division or combination of the land or a taking of part of the land for public purpose.

(Code 1976, §§ 14:8-3.0-14:8-3.4; Ord. No. 2167-00, 5-15-2000; Ord. No. 2238-03, 4-7-2003; Ord. No. 2276-04, 8-16-2004; Ord. No. 2409-12, 1-27-2012; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-35. Amendments.

(a) Generally. The city council may, by an affirmative vote of a majority of all its members, adopt amendments to this chapter. Amendments which change all or part of the existing classification of a zoning district from residential to either commercial or industrial require a two-thirds majority vote of all members of the city council.

- (1) *Initiation of proceedings.* Proceedings for amendment of the ordinance from which this chapter is derived shall be initiated by:
- a. A petition of the owners of the actual property, the zoning of which is proposed to be changed.
 - b. A recommendation of the planning commission.

- c. Action of the city council.
 - d. A recommendation of the community development director.
- (2) *Reference to the planning commission.* Except in the case of an initial recommendation by the planning commission, any proposed change shall be submitted to the planning commission and its recommendation shall be submitted to the city council before further proceedings are taken on any zoning request. The planning commission shall meet, consider the proposed change, and submit its recommendation to the city council within 60 days after submission of the matter to it. If no recommendation is given to the city council by the planning commission within 60 days after the request for a recommendation has been made to the planning commission, the city council may take action without a planning commission recommendation.
- (b) Additional requirements** for amendments changing zoning districts and boundaries thereof.
- (1) *Applications.* All applications for changes in the boundaries of any zoning district initiated by the petition of the owners of the property shall be accompanied by a map or plat showing the land proposed to be changed and all lands within 350 feet of the boundaries of that land and the names and addresses of the owners of the lands shown on the records of the county auditor.
 - (2) *Hearings.* After an application is received for a change to the ordinance from which this chapter is derived, the city shall set a date for a public hearing. At the time set for the hearing, the planning commission shall hear arguments for and against the proposed change, and may continue the hearing from time to time not exceeding 45 days from the original date specified in the notice of hearing. If a hearing is continued more than once, another notice shall be given in accordance with subsection (b)(3) of this section.
 - (3) *Notice.* A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use the records of the county auditor or any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the record of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subsection has been made. Proof of service shall be made by the affidavit of the persons serving same and shall be filed with the city clerk.
 - a. The commissioner of the department of natural resources shall be notified at least ten days in advance of the public hearing of any request to amend the boundaries of the FW, FF and FD districts.
 - b. FW, FF or FD boundaries shall not be amended unless the city provides adequate information to the commissioner of the department of natural resources that the map is in error or the lands are adequately protected from flood.

- (4) *Fees for rezoning and amendments to the text.* No application for change in the boundaries of any zoning district or for change in the text of the ordinance from which this chapter is derived shall be filed until the person making the request has paid to the city treasurer a fee, the amount which has been set by resolution of the city council. If the city planning commission initiates proceedings for rezoning and text amendments, the council may require that such payment be made by owners of property involved before making any change.
- (5) *Planning commission recommendation.* Any proposed change to the ordinance from which this chapter is derived shall be submitted to the planning commission. After holding a public hearing and deliberating on the request, the planning commission shall render a finding that all amendments to the zoning ordinance map and text are consistent with the comprehensive plan and shall submit its findings and recommendation to the city council within 45 days after submission of the matter to the city council. If no recommendation is given to the city council by the planning commission within 45 days after the request for a recommendation has been made to the planning commission, the city council may take action without a planning commission recommendation.
- (6) *Time limit for action.* The city council shall act on the proposed change within 45 days after reviewing a recommendation from the planning commission, or a period of 45 days has elapsed from the time the planning commission received the request, if no recommendation was made. This period may be extended if the applicant agrees to a time extension.

(Ord. No. 2358-08, 8-14-2008)

(c) Special procedure for comprehensive rezoning. Whenever the planning commission, in its capacity or acting on referral from the city council, recommends a comprehensive rezoning of a substantial part of the city which consists of not less than 50 lots of platted area or five acres of unplatted area in order to conform to changing conditions, the city council may make all or a part of that recommendation effective by amendment to the ordinance from which this chapter is derived. In such a case, the provisions of section 36-35(b) shall not be applicable; but the procedure for such amendment shall be as follows:

- (1) *Maps.* A map shall be prepared and filed in the office of the city clerk, which shows all streets and lands in the area proposed to be rezoned in sufficient detail to permit each platted lot and each parcel of ground to be identified by the zoning ordinance classification assigned and all zoning regulations which will be applicable to them if the proposed amendment for rezoning is adopted.
- (2) *Notice.* The city clerk shall publish notice in official newspaper of the city at least ten days prior to the date of the hearing.
(Ord. No. 2358-08, 8-14-2008)
- (3) *Planning commission hearing.* The planning commission shall meet and conduct a public hearing upon the proposed rezoning amendment at the time and place specified in the notice prior to making a recommendation for a comprehensive rezoning to the city council. The hearing may be adjourned from time to time by the planning commission, but it shall not be continued more than 60 days from the date of the original hearing.

- (4) *Adoption.* The city council shall act upon the proposed rezoning not less than seven days or more than 60 days after it receives a recommendation from the planning commission. A two-thirds vote of all members of the council shall be required to adopt any amendment to the zoning ordinance. The city council may alter the amendment proposed, but if the alteration results in a modification of the zoning map filed at the time of the first publication of notice of the hearing, it shall not be made until ten days after notice has been given by registered mail to the owner of the property to be zoned that an amendment is being considered and may be adopted which is different from that shown on the zoning map filed in support of the requested zoning change.
- (5) *Publication.* If an ordinance is adopted which provided for comprehensive rezoning even though less than the entire city is affected, the city council shall require that new zoning maps be prepared showing the zoning district boundaries after adoption of the comprehensive amendment. Those maps shall be published as part of the publication of the ordinance amendment. The zoning ordinance need not describe the tracts of land included in each zoning district in any way other than by reference to the zoning maps required by this section.

(d) Procedure for comprehensive plan and amendments.

- (1) *Purpose and intent.* The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the city. The comprehensive plan includes goals, policies and standards, a land use plan, a community facilities plan, a transportation plan and recommendations for plan execution and is an adopted statement of city policy concerning development. The ordinance from which this chapter is derived is adopted for the purpose of carrying out the policies and goals of the comprehensive plan. The planning commission shall render a finding that all amendments to the zoning ordinance map and text are consistent with the comprehensive plan.
- (2) *Amendments.*
- a. *Initiation of proceedings.* Proceedings for amendment to the comprehensive plan shall be initiated by:
 1. A petition of the owners of the actual property, the guiding of which is proposed to be changed.
 2. A recommendation of the planning commission.
 3. Action of the city council.
 4. A recommendation of the community development director.
 - b. *Amendment process.*

AMENDMENTS

1. Any person requesting a change in the comprehensive plan shall submit an application in the form prescribed by the city. The application shall describe the change requested, state the reasons for the requested change, and attach documentation to support the request. The applicant shall pay a fee established by the city council when the application is filed with the director of community development. If the request requires a change in the comprehensive plan map, two copies of a list of the names and addresses of property owners of record of all properties within 500 feet of the parcel for which the change is requested shall be filed with the application. The names and addresses of property owners within 500 feet may be obtained from the county auditor or other appropriate records.
2. When comprehensive plan land use amendments are proposed within 500 feet of a municipal boundary or county road, or when land use or text amendments may have impacts on the affected school or watershed districts, the director of community development shall forward a copy of the proposed request to adjacent municipalities, the affected school district, the county, and the affected watershed district within ten working days of receipt of the request by the city.
3. The director of community development shall set a date for a public hearing on the request by the planning commission. Notice of the public hearing shall be published at least ten days before the date of hearing, and, if the request requires an amendment of the comprehensive plan map, notice shall be mailed to all property owners of record within 500 feet of the subject property at least ten days before the date of the hearing. The planning commission shall hold the public hearing on the date stated in the notice and may continue the hearing once. If the planning commission believes it necessary to continue the hearing a second time, a new notice shall be published for the continued hearing.
4. The planning commission shall consider the testimony received at the public hearing, the staff reports, and other material it deems pertinent and shall report its findings and recommendations to the city council.
5. All comprehensive plan amendments shall be adopted by resolution of the city council approved by a two-thirds majority of all members of the council contingent upon approval of the metropolitan council. The resolution shall be forwarded to the metropolitan council within ten days following city council approval. The resolution shall be published following its adoption no later than 21 days after the date of its passage. The date of passage is the date of final metropolitan council approval if no revisions are requested. The resolution shall be effective upon its publication.
6. Requests for zoning ordinance amendments for property affected by a pending request for a comprehensive plan map amendment may be handled concurrently, however, the approval of such application shall be conditioned upon the approval of the comprehensive plan amendment by the metropolitan council and shall not become effective until after such approval is received.

7. If the requested application for a comprehensive plan amendment involves a land use or density change on a particular parcel of land, ~~and~~ and the request also includes an application for a conditional use permit, planned unit development, or variance related to that parcel, all applications may be accepted for processing and handled concurrently.

- c. *Exceptions.* When changes to the comprehensive plan involve a complete comprehensive plan revision, notice to individual property owners is not required. However, notice of public hearing at the planning commission shall be published in the official newspaper on three consecutive weeks, the latest at least ten days prior to the public hearing. Notice shall be sent to adjacent municipalities, the county, affected watershed districts, and affected school districts for review and comment of the proposed plan revision.

(Code 1976, §§ 14:8-4.0--14.8-4.4; Ord. No. 2188-01, 2-5-2001; Ord. No. 2212-01, § 2, 10-3-2001; Ord. No. 2358-08, 8-14-2008; Ord. No. 2419-12, 9-14-2012; Ord. No. 2449-13, 11-15-2013; Ord No. 2462-15, 2-2-2015)

Sec. 36-36. Reimbursement.

(a) Purpose. The purpose of this section is to:

- (1) Provide a procedure to reimburse the city for its cost of review, analysis, and evaluation of development proposals, conditional use permits, comprehensive plan amendments, zoning amendments, and enforcement of the ordinance from which this chapter is derived in cases where, due to the level of complexity of the application under consideration, excessive costs beyond those normally incurred by the city as a result of the administration of the ordinance from which this chapter is derived are incurred. The excess costs result from problems presented in review, analysis, and evaluation which necessitate intensive investigation and research. The intent of this section is to ensure an adequate level of review of these cases and to ensure that the adverse effects of development on the city are minimized and compliance with goals and objectives of the comprehensive plan and this chapter are obtained.
- (2) Provide a procedure and criteria to reimburse to applicants a portion of the fees and costs already paid to the city, but not needed to cover the costs and expenses incurred by the city in reviewing their application or request.

(b) Reimbursement of city expenses.

- (1) Conditions where reimbursement authorized. The city may, in its sole discretion, require reimbursement of city costs under the following conditions:
 - a. When the city manager finds multiple planning commission and city council meetings are required to review a particular item and additional staff time is expended on that item subsequent to the initial meeting.
 - b. When the city manager finds it necessary to retain consultants and experts to review requests and advise its staff of specific impacts of a proposal, including but not limited to impacts on traffic, utilities, drainage, and aesthetic or environmental characteristics of the community.

- c. When it is necessary for the city attorney to review a proposal.
- d. When the city manager finds that other extraordinary costs are incurred by the city as a result of the administration of this chapter.

(2) Procedure.

- a. The city shall notify the applicant that the city will incur additional costs at the earliest possible time and, if possible, provide the applicant with an estimate of the expected additional cost.
- b. The applicant shall pay the estimated additional cost to the city by certified check or bank money order. If the amount paid to the city initially is insufficient to cover all city costs, the additional amount shall be billed to the applicant. Any money which has not been used to pay additional costs after the applicant's request has been processed shall be refunded to the applicant.
- c. No certificate of occupancy for any project subject to this section shall be issued until all money owing to the city has been received.
- d. All costs billed under this section shall be based on the actual cost to the city of staff time, overhead, material costs, and actual billings from consultants, experts and attorneys.

(c) Refund of fees. If any application for a conditional use permit, variance, zoning amendment, PUD, continued special permit, Comprehensive Plan amendment, subdivision, or vacation is withdrawn in writing by the applicant or is not processed by the city for any other reason so that a final decision is not made by the city, the applicant is entitled to a refund of the application fees paid to the city according to the following provisions:

- (1) 75 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the deadline for rescinding the public hearing publication.
- (2) 50 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the request has been considered by the planning commission or board of zoning appeals.
- (3) 25 percent of the application fee and 100 percent of the recording fee shall be refunded if the request is withdrawn before the request is considered by the city council.
- (4) Any portion of additional fees paid to reimburse costs incurred by the city that exceeds the costs already or expected to be incurred by the city.

(Code 1976, §§ 14:8-3.4, 14:8-5.0--14:8-5.3; Ord. No. 2238-03, 4-7-2003; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-37. Continuation of certain special permits.

(a) **Purpose.** The purpose of this section is to continue certain special permits issued under provisions of the previous zoning ordinance and to set forth procedures by which a special permit may be terminated or converted to a conditional use permit and by which property affected by such special permits may be altered.

(b) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Certificate of zoning compliance means a certificate issued by the zoning administrator to the owner of a property covered by a continued special permit certifying that the property is in compliance with all provisions of the continued special permit.

Continued special permit means a special permit continued in effect pursuant to provisions of this section.

Current zoning ordinance means Ordinance No. 92-1902 adopted December 7, 1992, which became effective on December 31, 1992.

Previous zoning ordinance means Ordinance No. 730 adopted December 28, 1959, and all subsequent amendments thereto which were in effect on December 30, 1992.

Property means the legally described parcel of land, governed by a special permit, including but not limited to structures, parking lots, landscaping, lighting, signs and all other physical elements on the site and the use, operation and functioning of these elements.

Special permit means a land use approval issued by resolution of the city council under provision of the previous zoning ordinance.

(c) **Status of special permits.** Land uses permitted by special permits under provisions of the previous zoning ordinance are either permitted, permitted with conditions, conditional uses or nonconforming uses under the provisions of this chapter. This section establishes the status of special permits approved under the previous ordinance based upon the four categories described in this subsection and sets forth procedures for the termination, and in some cases conversion, of special permits.

- (1) *Special permit uses now permitted.* Special permits issued for land uses which, under this chapter, are now permitted uses in the zoning district in which the property is located are hereby continued in full force and effect. The owner of property subject to a continued special permit may request termination of the special permit by providing the city with a letter requesting termination. Upon receipt of a letter requesting termination, the city shall issue a written termination to the applicant which shall be recorded on the title to the property by the city. The owner of the property shall sign an assent form provided by the city wherein the owner agrees to indemnify and hold harmless the city for any actions or consequences arising from termination of the special permit. Upon termination of the special permit, the land use shall be governed by the regulations of this ordinance, and other applicable ordinances. Once a special permit is declared terminated, it may not be reinstated.

- (2) *Special permit uses now permitted with conditions.* Special permits issued for land uses which, under this chapter, are now permitted uses with conditions in the zoning district in which the property is located are hereby continued in full force and effect. The owner of property subject to a continued special permit may request termination of the special permit by providing the city with a letter requesting termination. Upon receipt of a letter requesting termination, the city shall issue a written termination to the applicant which shall be recorded on the title to the property by the city. The owner of the property shall sign an assent form provided by the city wherein the owner agrees to indemnify and hold harmless the city for any actions or consequences arising from termination of the special permit. Upon termination of the special permit, the land use shall be governed by the regulations of this ordinance, and other applicable ordinances. Once a special permit is declared terminated, it may not be reinstated.
- (3) *Special permit uses now conditional uses.* Special permits issued for land uses which, under this chapter, are now conditional uses in the zoning district in which the property is located are hereby continued in full force and effect. The holder of a continued special permit may request the city to verify compliance of the property with the terms and conditions of the continued special permit. A holder of a special permit requesting such verification shall submit such plans and other documentation necessary to demonstrate to the zoning administrator that the property complies with the terms and conditions of the continued special permit. Upon a satisfactory demonstration of compliance with the conditions of the continued special permit, the zoning administrator shall issue a certificate of zoning compliance stating that the property complies with the terms and conditions of the continued special permit. The certificate of zoning compliance shall be recorded on the title of the subject property by the city.

The holder of a continued special permit may request the city to convert the special permit to a conditional use permit under the terms of this chapter, provided the property meets all conditions and requirements of this ordinance and other applicable city ordinances. The procedure for converting a continued special permit to a conditional use permit shall be the same as that procedure required for adoption of a conditional use permit as specified in section 36-33(c).

- (4) *Special permit uses now nonconforming uses.* A land use which was permitted by special permit and which became a nonconforming land use in the district in which it is located when the ordinance from which this chapter was adopted on December 31, 1992, shall be a legal nonconforming use subject to the provisions of section 36-401, and the special permit authorizing the land use is now null and void.

(d) General conditions for continued special permit uses. All land uses subject to a continued special permit are subject to the following general conditions:

- (1) Any property covered by a continued special permit shall comply with all provisions of the special permit which were in effect on December 31, 1992. If it is subsequently determined that a property is not in compliance with the provisions of the continued special permit, the holder of the continued special permit shall take whatever actions are necessary to bring the property into compliance with the conditions and provisions set forth in the special permit. Failure to bring the special permit into compliance within 12 months of written notification of noncompliance by the city shall be grounds for termination of the continued special permit. The procedure to be followed in terminating the special permit shall be that specified in subsection 36-33(b)(5). Upon termination of the continued special permit, the use shall be subject to the provisions of section 36-401 and all other applicable provisions of this chapter, including the regulations for the district in which the use is located.

- (2) The property shall comply with all provisions of this chapter which require compliance with certain provisions by a certain date, including the dates listed in subsection 36-362(i)(7), subsection 36-36(k), subsections 36-406(f) and (h).
- (3) If the property is damaged or destroyed and the cost to repair such damage or destruction exceeds 60 percent of the assessor's market value of the structure at the time of the damage, the property shall be brought into compliance with this chapter.
- (4) Property covered by a continued special permit may be expanded, altered or modified, subject to all of the following:
 - a. The expansion, alteration or modification shall comply in all respects with applicable provisions of this chapter, and such expansion or addition shall not result in an increase or intensification of any existing nonconformities, except in the C-1 district, where an existing building is located more than 20 feet from the front property line, building additions of up to 3,000 square feet of ground floor area may be constructed continuing the existing setback if a separate pedestrian access is provided between the building and the public street from all sides of the lot which front on a public right-of-way.
 - b. Any nonconformities existing on the site shall be brought into greater or complete compliance with other provisions of this chapter to the extent reasonable and possible, except that greater or complete compliance will not be required with the following provisions:
 1. Lot area.
 2. Lot width.
 3. Required yards.
 4. Building height.
 5. Floor area ratio.
 6. Ground floor area ratio.
 7. Density.
 8. Designed Outdoor Recreational Area and Open Lot Area.
(Ord. No. 2267-04, 4-12-2004)
 - c. The expansion, alteration or modification shall follow the same procedures for approval as required by subsection 36-33(c) for conditional use permit amendments. This includes a finding that the amended continued special permit is consistent with the comprehensive plan.

(Code 1976, §§ 14:8-6, 14:8-6.1--14:8-6.4; Ord. No. 2267-04, 4-12-2004; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-38. Enforcement.

(a) Compliance with regulations.

- (1) *Compliance required.* All persons, firms, corporations, and voluntary associations shall comply with the regulations and conditions contained in this chapter. Any person, firm, corporation, or voluntary association who fails to comply with any of the provisions of this chapter, or violates any detailed statement, condition, or plan imposed in the manner permitted by this chapter, shall be guilty of a misdemeanor.
 - a. The city may enforce any provision of this chapter by issuing a citation, or by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction and may require reimbursement of all legal fees required for the enforcement of any provision of this chapter from persons found guilty of a violation.
 - b. The city, at its sole discretion, may enter into mediation regarding issues in the enforcement of this chapter, provided that mediation shall not be pursued where the issue involves a specific dimensional or performance requirement. Mediation may be pursued when the issue involves an interpretation of the application of chapter requirements. Mediation shall not be substituted for a variance proceeding and the city shall not agree to be bound by the mediation process when the result would be an action inconsistent with the intent of this chapter.
 - c. Each day that a violation occurs shall be considered a separate violation.
- (2) *Approved land uses.* Land shall be used only for the purpose permitted in the district in which the land is located.
- (3) *Height limits.* No building shall be erected, converted, enlarged, reconstructed, nor structurally altered to be higher than the height limit established for the district in which the building is located.
- (4) *Area regulations.* No building shall be erected, converted, enlarged, reconstructed, nor structurally altered unless it conforms to the area regulations of the use district in which the building is located. A lot shall not be divided nor shall any structure be erected or altered to reduce the floor area ratio below that required by this chapter for the district in which the lot is located.
- (5) *Parking and loading facilities.* No building shall be erected or structurally altered unless the site on which it is located provides the off-street parking and loading facilities required by this chapter.
- (6) *Encroachments.* The yards, parking spaces, designed outdoor recreation area, and open lot area required by this chapter shall not be encroached upon or considered as part of the yard, parking space, designed outdoor recreation area, or open lot area required for any other building unless joint use of parking or a combination of yards or designed outdoor recreation area or open lot area is specifically authorized by this chapter. (Ord. No. 2267-04, 4-12-2004; Ord. No. 2419-12, 9-14-2012)

- (7) *Building and lot limitations.* Every building erected or structurally altered after the effective date of the ordinance from which this chapter is derived shall be located on a lot as defined in section 36-4 and in no case shall there be more than one principal building on one lot, except as authorized by this chapter.
- (8) *Abandonment, revocation and cancellation of permit or variance.* If the zoning administrator determines that any holder of an existing variance or conditional use permit has violated any of the conditions or requirements imposed as a condition to approval of the permit or variance, or has violated any other applicable laws, ordinances, or enforceable regulation, the variance or conditional use permit granted by the city may be revoked and canceled by the following process:
- a. The zoning administrator shall notify the holder in writing of the violation. The notice shall be given in person or by United States Postal Service addressed to the address of the applicant stated on the original application. Notice shall also be served upon the occupant of the premises for which the conditional use permit or variance was issued or, if no occupant can be found, notice shall be posted in a conspicuous place upon such premises. Notice shall be effective on the date of mailing, personal service or posting.
 - b. The notice shall state that after the expiration of ten days from the date of the notice, the conditional use permit or variance is terminated without further action or proceeding.
- (9) *New construction required within two years.* All variances and conditional use permits shall be revoked and canceled after one year has elapsed from the date of the adoption of the resolution granting the variance or conditional use permit if a new structure or alteration or substantial repair of an existing building is required by the conditional use permit or variance and the holder has failed to complete the work within that year, unless a valid building permit authorizing such work has been issued and work is progressing in an orderly way.
- (10) *Occurrence of certain events.* If the holder of a conditional use permit or variance fails to make actual use of vacant lands or lands and structures which were existing when the permit or variance was issued and no new structure, alteration, or substantial repair to existing buildings was required; or if a new structure was required by the conditional use permit or variance and no building permit has been obtained, the conditional use permit or variance shall be revoked and canceled upon the occurrence of any of the following events:
- a. A change in the zoning use district for such lands is made by amendment to the ordinance from which this chapter is derived by the city council.
 - b. Eminent domain proceedings have been initiated to take all or any part of the premises described in the conditional use permit or variance.
 - c. The use described in the conditional use permit or variance becomes an illegal activity under the laws of the United States of America or this state.
 - d. Title to all or part of land described in such conditional use permit or variance is forfeited to the state for nonpayment of taxes.

- e. The person to whom the conditional use permit or variance was issued files a written statement in which that person states that the conditional use permit or variance has been abandoned. The statement shall describe the land involved or state the resolution number under which the conditional use permit or variance was granted.
- f. The premises for which the conditional use permit or variance was issued are used by the person to whom the permit or variance was issued in a manner inconsistent with the provisions of such conditional use permit or variance.
- g. The building or structure for which a variance or conditional use permit was granted is removed.

(11) *Abandonment if conditions not met or use discontinued.*

- a. Any conditional use permit granted by the city is revoked and canceled if all conditions imposed in the conditional use permit are not satisfied within a time specified by the city council or if the approved use is discontinued for a period of more than two years.
- b. Any variance granted by the board of zoning appeals is revoked and canceled if all conditions imposed in the variance are not satisfied within the time specified by the board of zoning appeals or if the approved use is discontinued for a period of more than two years.
- c. If an extension is requested by the owner of the property on which a conditional use permit has been discontinued prior to the end of two years, the city council may consider or approve, by resolution, such requested extension if the city council finds the use to be acceptable and a satisfactory reason exists to grant an extension; however, such extension shall not be granted if it would allow the discontinued use to extend more than an additional three years beyond the original two years.

(12) *Plan change not required.* In the event the City adopts an amendment to this Chapter that results in a building, land use or conditional use permit becoming non-conforming prior to the commencement of construction of the building, then changes to the plan will not be required if construction begins within 90 days after the effective date of the ordinance amending this chapter. If, however, building construction is voluntarily discontinued by the permit holder for a period of 90 days, then any further construction shall conform to the provisions of the amendment.

(13) *Uses superseding ordinance.* A use which violates the provisions of the ordinance which this chapter supersedes shall not be validated by the adoption of the ordinance from which this chapter is derived unless it is permitted by this chapter's provisions, nor shall this chapter extend any temporary use beyond the expiration date of a temporary permit granted prior to the effective date of the ordinance from which this chapter is derived.

(b) Enforcing officer. The planning and zoning supervisor is appointed the zoning administrator who shall enforce this chapter under the direction and control of the community development director and city manager.

(Code 1976, §§ 14:8-7.0--14:8-7.2; Ord. No. 2167-00, 5-15-2000; Ord. No. 2267-04; 4-12-2004; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-39. Public hearings.

Any public hearing required by this chapter may be continued once. If a hearing is continued more than once, another notice shall be given in accordance with section 36-34(b)(2).

(Ord. No. 2202-01, § 2, 8-20-2001; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Sec. 36-40. Compliance with the Comprehensive Plan.

No building permit, certificate of occupancy or registration of land use shall be issued unless the proposal complies with the comprehensive plan and the requirements of this chapter. If a conflict exists between this chapter and the comprehensive plan on land for which an approval is requested, such approval cannot be issued unless the conflict is resolved.

(Ord. No. 2218-02, § 2, 2-4-2002; Ord. No. 2419-12, 9-14-2012; Ord. No. 2462-15, 2-2-2015)

Secs. 36-41--36-70. Reserved.

