



VARIANCE / APPEAL APPLICATION
PUBLIC WORKS DEPARTMENT

Survey & Land Management Division

14949 62nd Street North, P.O. Box 6

Stillwater, Minnesota 55082-0006

PHONE (651) 430-6656 FAX (651) 430-6888

FEE: \$300.00

Rec #: _____

Permit #: _____

Please make checks payable to **WASHINGTON COUNTY**

Ck #: _____

Legal Description and Parcel Identification Number					
Project Address					
Owner	Address	City	State	Zip	Phone
Applicant (if different than owner) Address City State Zip Phone					
Description of Request					
<p>In connection with your request for a Variance/Appeal, your signature constitutes permission for a representative of the Washington County Public Works Department to enter upon your property, during normal business hours, for the purpose of evaluating your request. This may involve minor excavation and soil borings. If you wish to be present during such inspection, please contact this office.</p>					
Signature of Owner				Date	
Signature of Applicant (if different than owner)				Date	

An Equal Employment Opportunity/Affirmative Action Employer



VARIANCE/APPEAL APPLICATION CHECKLIST

The County must receive the following items to process your application. Your application will not be processed until all of these items are received. During the review of your application by staff, additional information may be requested. The Board of Appeals will hold a public hearing to consider the application within sixty (60) days of the date your application is determined by staff to be complete. Please refer to Appeals and Variances, Chapter 1, Section 6, of the Washington County Development Code for further information about the variance process.

_____ **Fee (non-refundable)**

_____ **Application Form**

_____ **Certificate of Survey (12 copies) with the Following Information:**

- Location of existing and proposed buildings
- Required building setbacks
- Lowest floor elevation of the proposed structure
- Location of the ordinary high level (for lakeshore properties)

_____ **Site Plan (12 copies) Showing the Following:**

- Location of all existing and proposed buildings - building sizes including square footage
- Curb cuts
- Driveways
- Access roads
- Parking Spaces
- Off-street loading areas
- Sidewalks
- Location of septic system
- Location of well
- Any other improvements on property

_____ **Written Statement Explaining the Variance(s) Requested and Reasons for the Request**

_____ **Building Elevations - Existing and Proposed**

**Excerpt from Washington County Development Code
Chapter One — Administration**

SECTION 6. APPEALS AND VARIANCES

6.1 Board of Adjustment and Appeals.

There is hereby established the Washington County Board of Adjustment and Appeals which shall have the following powers with respect to the Washington County Development Code.

- (1) **Administrative Appeals.** The Board shall have the exclusive authority to hear and decide appeals from and review any order, requirement decision or determination made by the Zoning Administrator with respect to the administration of the Washington County Development Code.
- (2) **Variances.** The Board shall have the exclusive power to order the issuance of variances from the terms of any Official Control, including restrictions placed upon nonconformities.
- (3) **Official Map.** Where an Official Map has been adopted by the County, the Board shall hear and decide an appeal by the owner of land who has been denied a permit to build within the limits of land delineated on an Official Map.

6.2 Board Membership and Meetings.

- (1) The Board of Adjustment and Appeals shall consist of five (5) members, the majority of whom shall come from the unincorporated area of the County. Four (4) of the members shall be appointed by the County Board on an at-large basis and one (1) of the members of the Board shall be the Chairman of the Washington County Planning Advisory Commission (or his designee). No elected official of the County, nor any employee of the County shall serve as a member of the Board.

(2) **Member Terms.**

Each member shall serve for a period of three (3) years and the terms of the members shall be staggered so that no more than two (2) terms expire in any one (1) year. The term of each member shall begin on January 1 and continue through December 31 of the last year of the term, provided, however, that any member shall continue to serve after the expiration of their term until a successor is appointed. Members will be limited to three (3) consecutive terms of appointment. Any member who misses three (3) consecutive meetings without a reasonable excuse may be replaced by the County Board.

(3) **Election of Officers and Rules for Proceedings.**

The Board of Adjustment and Appeals shall elect a chairman and vice-chairman from its members and shall appoint a recording secretary who need not be a member of the Board. Subject to such limitations as may be imposed by the Governing Body, the Board may adopt

rules for the conduct of proceedings before it. Such rules may include provisions for the giving of oaths to witnesses and the filing of written briefs by the parties. The Board shall provide for a record of its proceedings which shall include minutes of its meetings, its findings and the action taken on each matter heard by it, including the final order.

(4) Meetings and Quorum.

The meeting of the Board of Adjustment and Appeals shall be held at the call of the Zoning Administrator. A majority of the Board shall constitute a quorum and a majority vote of that quorum is sufficient to conduct business and take action. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a regular Board Member from voting thereon shall be decided by a majority vote of all members, except the member being challenged. In the event that the disqualification of a member due to conflict of interest results in less than a quorum (three (3) members) of the Board for a meeting, no further action can be taken on that matter before the Board.

(5) Notice and Hearing.

- (A) Upon receipt of an application that contains all required information, the Zoning Administrator shall refer the matter to the Board of Adjustment and Appeals and establish a time for hearing thereon by the Board. From the date the Zoning Administrator receives the application containing all required information, the Board of Adjustment and Appeals has sixty (60) days to take action on the request or the request shall be deemed approved. The Zoning Administrator may extend this time line by providing written notice of the extension to the applicant before the end of the initial sixty (60) day period. This notification must state the reasons for the extension and its anticipated length, which may not exceed sixty (60) days. The deadline may also be extended as indicated in Minnesota Statute 15.99 Subd. 3.
- (B) Notice of time, place, and purpose of the public hearing shall be given by publication in a newspaper of general circulation in any town, municipality or other area concerned and in the official newspaper of the county at least ten (10) days before the hearing of the hearing,
- (C) Written notice of all public hearings shall be sent to all owners of property of record within 500 feet of the affected property.
- (D) In the case of Official Map Appeals written notice must be given to owners of record within one-half mile of the affected property,
- (E) In all cases written notice shall also be given to the affected Board of Town Supervisors and the Municipal Council of any municipality within two (2) miles of the affected property.

- (F) Defects in the notice shall not invalidate any proceedings provided a bonafide attempt to comply with this section has been made.
- (G) Where applicable, no less than twenty (20) days prior to the public hearing, the Zoning Administrator shall send notice and copies of the applicants information to the following agencies for review and comment:
 - 1. Department of Natural Resources
 - 2. Minnesota/Wisconsin Boundary Area Commission
- (6) Board Findings.
 - (A) The Board of Adjustment and Appeals shall make written findings in any case of an appeal or application for a variance and shall state therein the reasons for its decision; the order issued by the Board of Adjustment and Appeals shall include the legal description of the land involved. Any such order shall be filed with the Zoning Administrator who shall immediately mail a copy thereof, bearing the notation of the filing date, to the appellant or applicant.
 - (B) A certified copy of any order issued by the Board of Adjustment and Appeals acting upon any appeal from an order, requirement, decision or determination of an administrative officer, or upon any application for a variance, shall be filed with the County Recorder or Registrar of Titles for record. Said filing shall be made by the Zoning Administrator as soon as is reasonably possible after the filing of the order with the Zoning Administrator.
 - (C) Before any variance decision under Chapter Five of this Development Code becomes final, the Board shall forward the decision to the Commissioner of Natural Resources. The Commissioner of Natural Resources shall certify in writing that the proposed action complies with the intent of the Wild and Scenic Rivers Acts and the Master Plan for the Lower St. Croix River in the manner specified in the Department of Natural Resources Regulations.

6.3 Administrative Appeals.

- (1) An appeal from any decision by the Zoning Administrator may be taken by any aggrieved party within thirty (30) days from the date of such decision by filing with the Zoning Administrator a written notice of appeal. The notice of appeal shall state:
 - (A) The particular order, requirement, decision or determination from which the appeal is taken;
 - (B) The name and address of the appellant;

- (C) The grounds for appeal; and
 - (D) The relief requested by the appellant.
- (2) The Board of Adjustment and Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and to that extent, shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit.

6.4 Variances.

A variance is the modification or variation of the Zoning Regulations where it is determined that, by reason of exceptional circumstances, the strict enforcement of the Zoning Regulations would cause unnecessary hardship.

- (1) No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.
- (2) An application for a variance shall be filed with the Zoning Administrator; the application shall be accompanied by development plans showing such information as the Zoning Administrator may require for purposes of this Development Code. If the application does not contain all required information, the Zoning Administrator shall send notice within ten (10) business days of receipt of the request, telling the applicant what information is missing.
- (3) Variances shall only be permitted when they are in harmony with the general purpose and intent of the Official Controls in cases when there are practical difficulties or particular hardships in the way of carrying out the strict letter of any official control and when the terms of the variance are consistent with the Comprehensive Plan.
- (4) "Hardship" as used in connection with the granting of a variance means:
 - (A) The property in question cannot be put to a reasonable use if used under conditions allowed by the Official Controls; and
 - (B) The plight of the landowner is due to circumstances unique to the property, not created by the landowner; and
 - (C) The variance, if granted, will not alter the essential character of the locality.
 - (D) Economic conditions alone shall not constitute a hardship if a reasonable use for the property exists under the terms of the Development Code.
 - (E) The Board may consider the inability to use solar energy systems a "hardship" in the granting of the variance.

- (5) Variances shall be granted for earth sheltered construction as defined in Minnesota Statute 216C.06, Subd. 2 when in harmony with the Official Controls.
- (6) Where, in the opinion of the Board of Adjustment and Appeals, a variance may result in a material adverse effect on the environment, the applicant may be requested by the Board to demonstrate the nature and extent of that effect.
- (7) The Board of Adjustment may impose conditions in the granting of variances to ensure compliance and to protect adjacent properties and the public interest.
- (8) In exercising its power under this Development Code, the Board shall take into consideration the affected town board's recommendations when the Board of Adjustment's decision directly affects land within the township.
- (9) No application for the same variance as ruled upon by the Board of Adjustment and Appeals shall be resubmitted for a period of twelve (12) months from the date of denial of the previous application unless there has been a substantial change in circumstances as it relates to the request.

6.5 Official Map

- (1) Whenever a building permit is denied pursuant to an official mapping regulation enacted by the Washington County Board, the Board of Adjustment and Appeals shall, upon appeal filed by the owner of the land hold a public hearing upon the appeal. After receiving the advice and recommendations of the Zoning Administrator, the Board of Adjustment and Appeals may grant a permit for building in an area designated on an Official Map in any case in which the Board finds, upon the evidence and arguments presented to it:
 - (A) That the entire property of the applicant, of the area designated for public purposes forms a part, cannot yield a reasonable return to the owner unless such a permit is granted, and
 - (B) That balancing the interest of the County in preserving the integrity of the Official Map and of the Comprehensive Plan and the interest of the property owner in the use of the property and in the benefits of the ownership, the granting of such permit is required by considerations of justice and equity.
- (2) If the Board authorizes issuance of a permit, it shall specify the exact location, ground area, height and other details as to the extent and character of the building for which the permit is granted. If the Board authorizes issuance of a permit, the Washington County Board shall have six (6) months from the date of the decision of the Board to institute proceedings to acquire such land or interest therein and if no such proceedings are started within that time, the Zoning Administrator shall issue the permit if the applicant otherwise conforms to the Development Codes.

6.6 Judicial Appeals.

All decisions by the Board of Adjustment and Appeals shall be final, except that anyone aggrieved by decision shall have the right to appeal within thirty (30) days after receipt of notice of the decision to the Washington County District Court on questions of law and fact. In order to preserve their right to appeal, a non-party must notify the Zoning Administrator within seven (7) days of the date of the hearing at which the decision was made of their desire to obtain a copy of the decision in order to preserve their right to appeal or it is deemed waived.