

ORDINANCE NO. 863
STATE OF MINNESOTA
COUNTY OF RAMSEY
CITY OF NEW BRIGHTON

AN ORDINANCE TO UPDATE THE DEFINITION OF "VARIANCE"
AND ASSOCIATED VARIANCE PROVISIONS TO BE IN COMPLIANCE
WITH CURRENT STATE STATUTES

THE CITY COUNCIL OF THE CITY OF NEW BRIGHTON ORDAINS:

Section 1. The City Council of New Brighton hereby amends Zoning Code Chapter 2; Article 1 General Conditions; Section 2-020 Definitions, as follows:

Definition #75, Variance, is deleted in its entirety, and the following definition is added:

(75) Variance. A modification or variation of the provisions of this zoning code as applied to a specific piece of property.

Section 2. The City Council of New Brighton hereby amends Zoning Code Chapter 8, Article 2, Special Use Permit and Variance, as follows:

Sections 8-110 through 8-130 are restated and incorporated herein unchanged.

Sections 8-140 through 8-200. Reserved.

Sections 8-210 through 8-260 are hereby deleted in their entirety, and the following language is added:

Sec. 8-210. Variance.

The City Council shall have the power to grant variances from the literal provisions of the City's Zoning Code as authorized by Minnesota Statutes, Section 462.357, Subd. 6, as may be amended. The variance process is intended to provide limited relief from the strict requirements of the Zoning Code in cases where strict application of a particular requirement will create practical difficulties due to circumstances unique to the individual property under consideration. It is not intended that variances be granted to allow a use not permitted by the underlying zoning district, nor to merely remove inconveniences or financial burdens that the requirements of the Zoning Code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

Sec. 8-220. Application.

All applications for a variance shall include:

- (1) A completed City of New Brighton application form;
- (2) Verification of authority to file the application (i.e. proof of ownership or control of the property; if not the owner of the property, the signature of the fee owner of the property);
- (3) A written narrative demonstrating that the criteria for a variance as set out in Section 8-230(1) have been met;
- (4) An up-to-date survey of the property showing all information necessary to allow the City to determine conformance with all zoning provisions, and to calculate the specific variance(s) being requested. Information shall include but not be limited to:
 - A. Property and structure dimensions;
 - B. Setback dimensions/measurements; and
 - C. Parking and access locations and dimensions;
- (5) Electronic copies of all documents required by the specific application;
- (6) Applicable fee; and
- (7) Any other information deemed necessary by the City in order to review the application.

Sec. 8-230. Review.

- (1) **Variance Criteria.** Approval of a variance requires that the City find that all of the following criteria are satisfied, as they may be modified from time to time by statute or interpretative court decisions:
 - A. The request is in harmony with the general purposes and intent of the Zoning Code;
 - B. The variance is consistent with the City's comprehensive plan;
 - C. The applicant can establish there are "practical difficulties" in complying with the Zoning Code based on the following:
 1. The applicant proposes to use the property in a reasonable manner not permitted by the Zoning Code;
 2. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
 3. A variance, if granted, will not alter the essential character of the locality.
- (2) **Practical Difficulties and Variance Guidelines.**
 - A. Economic considerations alone shall not constitute a sufficient basis for granting a variance if reasonable use for the property exists under the terms of the ordinance.

- B. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- C. Variances shall be granted for earth sheltered construction, as defined by State Statute, when in harmony with the ordinance.
- D. A variance to permit a use that is not otherwise allowed by this ordinance is prohibited.
- E. Variances may be granted to permit the temporary use of a one-family dwelling as a two-family dwelling.

(3) Planning Commission.

- A. Before any variance is considered by the City Council acting as the Board of Adjustments and Appeals, the Planning Commission shall hold at least one public hearing after proper notice has been issued in accordance with Section 8-055.
- B. Following the hearing, the Planning Commission will be asked to discuss the facts of the case and adopt findings and recommendations on the proposed variance for consideration by the City Council.
- C. Applications may be forwarded to the City Council without a recommendation from the Planning Commission if it is deemed necessary to ensure compliance with state mandated deadlines for application review.

(4) City Council.

- A. The City Council shall consider the applicant's submittals, the Planning Commission's recommendation, City staff's recommendation, and the comments received at the public hearing against the variance review criteria outlined in Section 8-230(1), and take action on the request(s) as soon as practicable.
- B. Approval or denial of a variance shall require a majority vote of the City Council.
 - 1. In approving a variance, the City Council may impose conditions on the approval as deemed appropriate to ensure compliance with the approval and to protect adjacent properties. Any conditions must be directly related to and must bear a rough proportionality to the impact created by the variance.
 - 2. Denial of any request shall be accompanied by findings of fact as to how the request did not meet one or more of the review criteria.

Sec. 8-240. Effect of a Variance.

- (1) The issuance of a variance shall authorize only the particular variation that is approved by the City Council.
- (2) A variance, including any conditions, shall run with the land and shall not be affected by a change in ownership.

98 **Sec. 8-250. Subsequent Development.**

99 Development authorized by the Variance shall not be carried out until the applicant has secured all
100 other approvals required by this zoning ordinance or any other applicable chapters or regulations.
101 The granting of a variance does not constitute, imply, or guarantee the granting of any other such
102 required approval (e.g.: a building permit).

103 **Sec. 8-260. Time Limit.**

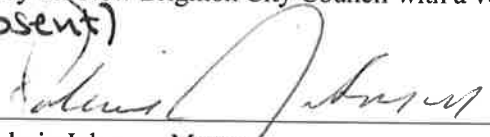
- 104 (1) Unless otherwise specified in the variance, if a building permit has not been applied for
105 within one year of the date of the variance approval, the variance shall become invalid.
106 Permitted timeframes do not change with successive owners.
- 107 (2) Upon written request, extensions of one year may, but need not, be granted by the City
108 Council if the applicant can show good cause.

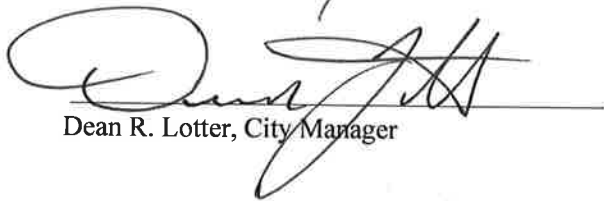
109 **Sec. 8-270. Amendment.**

- 110 (1) A variance may be amended, extended, or modified only in accordance with the procedures
111 and standards established for originally securing the variance.
- 112 (2) A request for a change in the conditions of approval of a variance shall be considered an
113 amendment and subject to the full review procedure set forth in this Article.
- 114 (3) An additional application fee may be required before consideration of the amendment
115 request.

116 **Section 3. Effective Date.** This ordinance shall be in full force and effect from and upon its adoption and
117 publication according to law.

118 ADOPTED this 13th day of November, 2018 by the New Brighton City Council with a vote of 4
119 ayes and 0 nays. (Dunsworth absent)

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121 
122 Valerie Johnson, Mayor

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125 Dean R. Lotter, City Manager

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127 ATTEST:

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130 Terri Spangrud, City Clerk
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