

PERVIOUS SURFACE: A surface which allow the penetration of water into the ground.

PHASE ONE ARCHAEOLOGICAL SURVEY: An effort to locate and record archaeological sites. The survey shall be conducted in accordance with the State Historic Preservation Office (SHPO) document entitled SHPO Manual for Archaeological Projects in Minnesota (July 2005), or as amended. Winona County requires a qualified professional archaeologist, as defined by Minnesota State Statutes 138.31, Subdivision #14, or entities listed on the Archaeological Contractors List compiled by the State Historic Preservation Office (SHPO) to conduct and prepare the survey.

PLAIN: An area of land with relatively low relief, meaning that it is flat.

PLANNING DEPARTMENT: The Winona County Planning Department.

PLANNING DIRECTOR: The Planning Director of the Winona County Planning Department or the Director's authorized representative.

PLOT: A tract of land other than one (1) unit of a record plat or subdivision and occupied and used or intended to be occupied and used as an individual site and improved or intended to be improved by the erection thereon of buildings and including as a minimum such open space as required under this Ordinance.

PORTABLE BUILDING: A structure that can be moved with wheels or skids when empty.

POTENTIAL POLLUTION HAZARD: An animal feedlot or manure storage area that:

- a. Does not comply with the requirements of parts 7020.20000 to 7020.2225 and has not been issued an SDS or NPDES permit establishing an alternative construction or operating method; or
- b. Presents a potential or immediate source of pollution to waters of the State as determined by inspection by a County Feedlot Pollution Control Officer or Agency staff by evaluating the following:
 - I. The size of the animal feedlot or manure storage area;
 - II. The amount of pollutants reaching or that may reach waters of the state;
 - III. The location of the animal feedlot or manure storage area relative to waters of the state;
 - IV. The means of conveyance of animal manure or process wastewater into waters of the state; and
 - V. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal manure or process wastewater into waters of the state.

PRACTICAL DIFFICULTY: As defined in Minnesota Statutes, Chapter 394: Practical Difficulty as used in connection with granting a variance means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.

RULES & DEFINITIONS

USE, PERMITTED: A public or private use which of itself conforms with the purposes, objectives, requirements, regulations and performance standards of a particular district.

USE, PRINCIPAL: The main use of land or buildings as distinguished from subordinate or accessory uses. A "principal" use may be either permitted or conditional.

USE, SEMI PUBLIC: The use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

USE, SUBSTANDARD: Any use existing prior to the adoption of this Ordinance or amendments thereto which is allowed either as a permitted or conditional use but does not meet the minimum lot area, height, yard, width, setbacks or depth standards.

USE, SURFACE WATER-ORIENTED COMMERCIAL: The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts and restaurants with transient docking facilities are examples of such use.

UTILITIES: Refers to all utility service providers, whether the same be government owned facilities or furnished by private utility companies.

VALLEY: The land between hills or mountains, possibly containing a stream or river.

VARIANCE: Any modification or variation of official controls where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause unnecessary practical difficulties.

VERTICAL CURVE: The surface curvature on a road or highway center line located between lines of different percentage of grade.

VETERINARY HOSPITAL OR CLINIC: A place used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm or injured animals and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for the treatment, observation, and/or recuperation. It may also include boarding that is incidental to the primary activity, but does not include a kennel.

WAREHOUSE: A building used primarily for the storage of goods and materials.

WATER SUPPLY SYSTEM, COMMUNITY: A system providing water for human consumption and either containing at least fifteen (15) service connections or living units by year-round residents, or regularly serves at least twenty five (25) year-round residents.

WATERS OF THE STATE: All streams, lakes, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portions thereof.

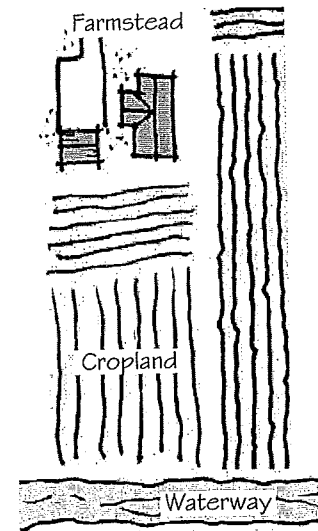


Figure 4.33 Example of waterway adjacent to farmstead

Appeal to District Court

All decisions by the Board of Adjustment or the Variance Hearing Officer, in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the state shall have the right to appeal within 30 days, after receipt of notice of the decision, to the district court in the county in which the land is located on questions of law and fact.

Any party that would like to submit an appeal to the decision just rendered at a public hearing must do so to the District Court. The Planning Department is not responsible for filing the appeal.

Figure 5.4 Appeal to District Court

5.6 Variances

5.6.1 Purpose

The purpose of this section is to provide for deviations from the literal provisions of this Ordinance in instances where their strict enforcement would cause practical difficulties because of physical circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance.

5.6.2 General Provisions and Standards for Evaluating a Variance

1. The Winona County Board of Adjustment shall not grant a variance from the regulations of this Ordinance unless it shall make findings of fact based upon the evidence presented and on the following standards as required by Minnesota State Statute 394.27 Subd. 7.
 1. The variance request is in harmony with the intent and purpose of the ordinance.
 2. The variance request is consistent with the comprehensive plan.
 3. The applicant has established that there are practical difficulties in complying with the official control

- and proposes to use the property in a reasonable manner.
4. The variance request is due to special conditions or circumstances unique to the property not created by owners of the property since enactment of this Ordinance.
 5. The variance will not alter the essential character of the locality nor substantially impair property values, or the public health, safety or welfare in the vicinity.
 6. Economic considerations alone do not constitute practical difficulties.
 7. The variance cannot be alleviated by a reasonable method other than a variance and is the minimum variance which would alleviate the practical difficulty.
 8. The request is not a use variance and shall not have the effect of allowing any use that is not allowed in the zoning district, permit a lower degree of flood protection than the regulatory flood protection elevation or permit standards lower than those required by State Law.
2. When deciding on a petition regarding the Floodplain District the Board of Adjustment must also satisfy the following additional criteria of the Federal Emergency Management Agency:
1. 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.
 2. Variances shall only be issued by Winona County upon:
 1. A showing of good and sufficient cause, and
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 3. 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.
 3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. Application for a variance shall set forth reasons that the variance is justified in order to make reasonable use of the land, structure or building.

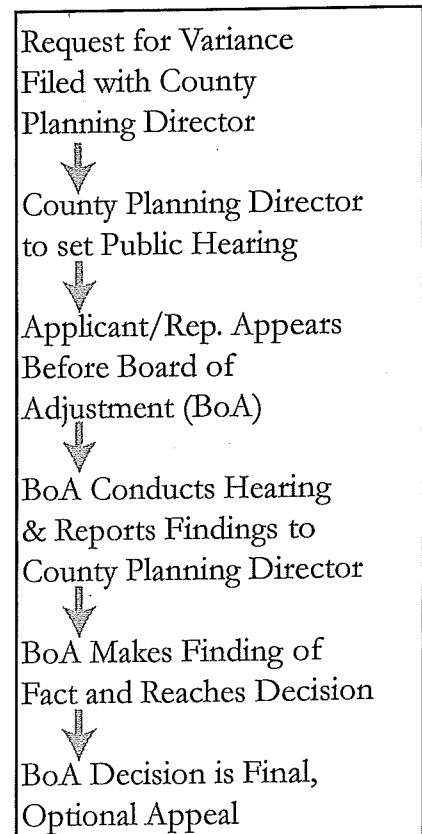


Figure 5.5 Variance Process

Chapter 5

4. Should the Board of Adjustments find that the conditions outlined heretofore apply to the proposed lot or parcel, the County may grant a variance from the strict application of this Ordinance so as to relieve such practical difficulties to the degree considered reasonable, provided such relief may be granted without impairing the intent of this Ordinance.
5. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls.
6. The Board of Adjustment 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.
7. The Board of Adjustment shall arrive at a decision on such appeal or variance in accordance with Minnesota Statute Section 15.99 also known as the "Sixty (60)-day law." It shall make its decision in writing setting forth the findings of fact and the reasons for its decisions.