

Applicant

Blue Earth County
P.O. Box 3566
Mankato, MN 56002-3566

Request

Request for an Ordinance Amendment to update Chapter 24 of the Blue Earth County Zoning Ordinance. The proposed amendments are to replace **Section 24-44 Violations, penalties and enforcement provisions** and **Section 24-48 Board of Adjustment**, with updated versions of those same sections.

Summary

In response to changes made at the state-level, as well as an increase in land use proposals which have the potential for greater environmental impacts, it was determined that an update to the Blue Earth County Zoning Ordinance was necessary to ensure staff and decision makers within Blue Earth County are aware of the necessary requirements needed to meet current regulations.

On March 16, 2016, a training session was held at the Blue Earth County Historic Courthouse. During this training, some of the repeated issues that were being seen throughout the county were highlighted. Changes were proposed to the ordinance and forms used by the Board of Adjustment and Planning Commission.

Several meetings were held between staff and the office of the County Attorney. In addition, a follow-up work session was held on July 6, 2016 to discuss the final draft of the proposed changes. The July 6th meeting provided an opportunity for members of the public along with the Board of Adjustment and the Planning Commission to provide feedback to staff.

The proposed changes to the Zoning Ordinance contained in this staff report, are the result of all of the previously discussed training, meetings and work sessions.

Minnesota DNR Review

In an email dated July 15, 2016, Dan Girolamo, an Area Hydrologist for the Minnesota Department of Natural Resources stated he had reviewed the proposed changes and had no substantive comments to offer.

Opinions

Staff has developed the following opinions regarding the proposed amendments to Chapter 24 of the Blue Earth County Code of Ordinances:

1. Minnesota Statute, Chapter 394.21 gives counties the authority to carry on county planning and zoning activities.
2. By bringing Chapter 24 of the Code of Ordinance into conformance with state statutes, the county will be in a position to better protect the public health, safety and general welfare of the residents in Blue Earth County.

Recommendation

Staff recommends that the following amendments be made to the Blue Earth County Code of Ordinances:

Chapter 24 - ZONING ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 24-44 Violations, penalties and enforcement of chapter provisions

- (a) ***Circumstances Constituting a Violation/Violations Misdemeanors.** Any person, partnership, association of one or more individuals, firm, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects, or refuses to comply with the provisions of this Ordinance, including violations of conditions established in connection with the granting of Variances, land use permits, land alteration and grading permits, and Conditional Use Permits, or fails to comply with restoration orders, or who knowingly makes any false statement in any document required to be submitted under the provisions hereof, shall be considered to be in violation of the ordinance and shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed 90 days, or both. Unless otherwise provided, each act of violation and every day on which such violation continues shall constitute a separate offense.*
- (b) ***Administrative Enforcement upon Determination of a Violation.** Whenever the Zoning Administrator determines that any work, activity, construction, installation or use is being done or conducted contrary to the provisions of this Ordinance or any permit issued pursuant to this ordinance, the Zoning Administrator may issue an order to stop work directing such work, activity, construction, installation or use be stopped. The Zoning Administrator will notify the owner of the property and/or the permit holder of the violation through an order to stop work, which will be sent or delivered to the owner and/or permit holder. The order to stop work will identify, at a minimum, the following:*
- i. The nature of the violation;
 - ii. The action required on the part of the property owner and/or permit holder to eliminate or resolve the violation;
 - iii. A reasonable time in which the violation must be remedied; and

- iv. Inform the property owner and/or permit holder of their right to appeal the order to stop work and determination of the Zoning Administrator to the Board of Adjustment. Said appeal to proceed and be processed in the manner set forth in Section 24-48 of this ordinance, with the exception that the time to appeal an order to stop work to the Board of Adjustment shall be 10 business days from the date of the issuance of the order to stop work.
1. Work that has been stopped under an order to stop work shall not be resumed until the reason for the work stoppage has been completely satisfied. The Zoning Administrator will notify the property owner when the work can be resumed.
 2. Violation of an order to stop work issued under this ordinance shall constitute a misdemeanor violation.
 3. The failure of a property owner and/or permit holder to appeal the order to stop work of the Zoning Administrator shall result in the order to stop work being considered final under this ordinance.
 4. If compliance with the order to stop work is not obtained within a reasonable period of time, the Zoning Administrator will report such violations to the County Attorney, who will take the action he or she deems appropriate on the matter.
- (c) ***Civil Enforcement Procedures.*** *In the event of a violation or a threatened violation of the Ordinance, any permit issued under this Ordinance, or any regulation or other official control adopted by the Board, the Zoning Administrator, in addition to other remedies, may institute appropriate civil actions or proceedings to prevent, prosecute, restore, restrain, correct, or abate such violations or threatened violations, and it may be the duty of the County Attorney to institute such action.*
- (d) ***Other Enforcement Options and Remedies Available.*** *None of the enforcement options set forth in this section are meant to be the sole or exclusive means of enforcement procedures that the County may follow. The administrative enforcement process and the other enforcement procedures referred to in this section are in addition to any other right, remedy, or cause of action the County may have under Minnesota law to take actions, either civilly or criminally, to eliminate or resolve violations of this Ordinance. All such rights, remedies, and causes of action may, in the County's sole discretion, be exercised separately or in conjunction with one another and with such frequency as the County deems appropriate.*
- (e) ***Application to County Personnel.*** *The failure of any officer or employee of the County to perform any duty imposed by this Ordinance shall not subject the officer or employee to a penalty imposed for violation unless a penalty is specifically provided for such failure.*

Sec. 24-48 Board of Adjustment

- (a) **Establishment.** There is hereby established the Blue Earth County Board of Adjustment which shall have duties and responsibilities as set forth herein and as provided for in Minnesota Statutes Chapter 394.
- (b) **Membership.** The Board of Adjustment shall consist of either five (5) or seven (7) members who shall be appointed by the Blue Earth County Board of Commissioners. At least one (1) member shall be a voting member of the Planning Commission. At least one (1) member shall be a resident of the unincorporated portion of the County. No elected or appointed officer of the county, or employee of the Board of Commissioners, shall serve as a member of the Board of Adjustment.
1. Vacancies on the board of Adjustment shall be filled by the Board of Commissioners for the unexpired portion of the term. Vacancies exist due to any of the following circumstances: (1) death of a member; (2) resignation of a member; (3) removal of a member.
 2. Questions of whether any particular issue or matter before the Board of Adjustment involves a conflict of interest sufficient to disqualify a member from voting therein shall be decided by a majority vote of all Board members, except the Board member being challenged.
- (c) **Term.** Each member shall serve for a period of three (3) years. The term of each member shall begin on January 1 and shall 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.
- (d) **Removal.**
The Board of Commissioners may remove a member for any of the following reasons:
1. Failure of a member to attend one-third (1/3) of the regularly scheduled meetings in any calendar year.
 2. Failure to attend 3 consecutive meetings without an excuse deemed reasonable by the Board of Commissioners.
 3. Attendance at less than the entirety of Board of Adjustment meetings to such an extent and with such frequency as to, in the opinion of the Board of Commissioners, render the member's services too little value to the County to justify continued membership on the Board of Adjustment.
 4. Violation by the member of any land use control ordinance adopted pursuant to the authority of Minnesota Statutes Chapter 394, or any permits issued thereunder.

5. Inability to carry out the duties of a member due to a conflict of interest.
 6. Offensive, harassing or abusive behavior by a member either at meetings or under circumstances that the Board of Commissioners concludes negatively affects the ability of the member to perform the duties of the position.
 7. Any other conduct which in the determination of the Board of Commissioners negatively affects the ability of the member to carry out the duties of the position, or constitutes misconduct warranting removal.
- (e) **Election of Officers.** The Board of Adjustment shall elect a chairman and vice chairman from among its members and shall appoint a secretary who need not be a member of the Board. It shall adopt rules of procedure for the transaction of its business, in whatever form it deems appropriate. The Board shall keep a public record of its proceedings, which shall include the minutes of its meetings, any findings it may make on matters before it, and action taken on each matter heard by it.
- (f) **Meetings and Quorum.** The meetings of the Board of Adjustment shall be held at the call of the Blue Earth County Zoning Administrator, or the call of the chairman of the Board of Adjustment, and at such other times as the Board in its rules of procedure may specify. A simple majority of the members shall constitute a quorum, and a majority vote of that quorum is sufficient to conduct business and take action. The chairman has full voting privileges at all times.
- (g) **Compensation.** The members of the Board of Adjustment may be compensated in an amount to be determined by the County Board and may be paid their necessary expenses in attending meetings of the Board and in conduct of the business of the Board.
- (h) **Powers and Duties of the Board of Adjustment.** The Board of Adjustment shall have the following duties.
1. **Variances.** The Board of Adjustment shall have the exclusive authority to order the issuance or denial of variances from the requirements of any official control, including restrictions placed on nonconformities.
 2. **Administrative Appeals.** The Board of Adjustment shall have the exclusive authority to hear and decide appeals from any order, requirement, decision or determination made by an administrative official charged with enforcing any Ordinance adopted under the authority of Minnesota Statutes Chapter 394.
 3. **Official Map Appeals.** The Board of Adjustment shall have the exclusive authority to hear and decide any appeals of a denial of a land use permit by the County Zoning Department due to the land's location on any official map, as set forth in, and under the procedures of, Minnesota Statute Section 394.361.

(i) Procedures of the Board of Adjustment.

1. Applications for any variance, any administrative appeal, and any official map appeals as described and set forth in Minnesota Statutes Section 394.361, shall be submitted to the County Planning and Zoning Office on forms provided by the office for each type of proceeding. They shall be accompanied by all information required to be included in a completed application, as determined by the County Zoning Administrator. They shall also be accompanied by the required application fee.

2. Administrative Appeal Applications.

Administrative appeals may be taken by any person, firm or corporation aggrieved, or by any officer, department, board or bureau of a town, municipality, county, or state. The appeal must be made within 30 calendar days from the date of the order, requirement, decision or determination being appealed by filing with the County Zoning Office a written notice of appeal. The notice of appeal shall be accompanied by any required fee. The notice shall state the following:

- a. the particular order, requirement, decision, or determination from which the appeal is taken;
- b. the name and address of the appealing person or entity;
- c. the specific grounds for the appeal, including all argument as to why the appealing person or entity believes the order, requirement, decision or determination being appealed was in error; and
- d. the specific relief requested by the appealing person or entity.

3. The County Zoning Administrator shall refer any application to the Board of Adjustment for hearing and review after such application has been deemed complete.

4. The Board of Adjustment will hold at least one public hearing on an application for a variance or an administrative or official map appeal, and provide notice thereof pursuant to the requirements and procedures as set forth in Minnesota Statutes Section 394.26. In its sole determination and discretion, the Board of Adjustment may hold additional public hearings on applications.

5. Decisions on Administrative Appeals.

The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken. In exercising this power the Board of Adjustment may direct the issuance of a permit or issue such other order as consistent with its decision on the appeal.

6. The applicant or the authorized representative of the applicant is encouraged to appear at

the hearing on the request to present evidence and answer questions.

7. In all variance proceedings before the Board of Adjustment, the burden of proof is on the applicant to show that the criterion for the granting of a variance is present.
 8. In all administrative and official maps appeals it is the burden of the applicant to prove that the action of the Zoning Office was in error and should be reversed or modified.
 9. An applicant for a variance must have an ownership interest in the property for which an application is made.
 10. As authorized in Minnesota Statute § 394.362, the applicant for a variance which in the opinion of the Board of Adjustment may result in a material adverse effect on the environment may be required by the Board of Adjustment to demonstrate the nature and extent of the effect.
- (j) **Criteria for Granting Variances.** A variance to a provision of the Zoning Ordinance may be issued to provide relief to the landowner in those zones where the intent of the applicable standards creates practical difficulties for the property owner in the use of their land.

No variance shall have the effect of allowing the Floodplain District a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by state law.

A variance may be granted only in the event that all of the following circumstances exist:

1. The variance is in harmony with the general purpose and intent of the official control.
 2. The variance is consistent with the intent of the comprehensive plan.
 3. The property owner proposes to use the property in a reasonable manner not permitted by an official control.
 4. The plight of the landowner is due to circumstances unique to the property, not created by the landowner.
 5. The variance will not alter the essential character of the locality.
 6. The practical difficulty includes more than economic considerations alone.
- (k) **Additional considerations in situations involving after-the-fact variances.** In consideration of an after-the-fact variance request, and in addition to the criteria listed in Section 24-48 (j), the Board of Adjustment shall take into consideration and weigh the following:
1. Whether or not the applicant acted in good faith or attempted to comply with the ordinance.

2. Whether a substantial investment of money has been made.
 3. Whether the construction is fully completed.
 4. Whether there are similar structures in the area.
 5. Whether the benefit of the county is outweighed by the burden on the applicant, if the applicant is required to comply with the ordinance.
- (l) **Other provisions relating to variances.**
1. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
 2. The Board of Adjustment may impose conditions on the granting of any variance. Conditions are to be directly related to the variance, bear a rough proportionality to the impact created by the variance, and shall be what the Board of Adjustment considers reasonable and necessary to protect the public health, safety and welfare.
 3. A variance shall expire and be considered null and void two years after the issuance of the variance if the use, actions or construction authorized by virtue of the variance has not yet begun. For purposes of this section, construction shall include significant site preparation work including land clearing, excavation, and the installation of utilities necessary for the placement, assembly, or installation of utilities or equipment, the installation of footings, slab, foundation, posts, walls or other portions of a building.
 4. The County Zoning Administrator may, in his or her sole discretion, grant one extension of this time period for up to one year upon a written request of the property owner, if the written request is received at least 30 days prior to the expiration of the two year period, and if the County Zoning Administrator determines that reasonable cause for the extension exists.
 5. A variance application may not be resubmitted for a period of at least one year from the date the request is denied, unless the Zoning Administrator determines in his or her sole discretion that the application is substantially changed from the earlier denied request, or that there is new evidence, or that in the opinion of the Zoning Administrator a substantial change of circumstances exists.
 6. A certified copy of any order issued by the Board of Adjustment acting upon a request for a variance, or upon any appeal from an order, requirement, decision or determination by an administrative official, shall be recorded with the County recorder. The order issued by the Board of Adjustment shall include the legal description of the property involved. The Zoning Administrator shall be responsible for the recording of such orders.

Secs. 24-49--24-80 Reserved.

Attachments:

- A-1 Sec. 24-44 Violations, penalties and enforcement of chapter provisions (in Track Change)
- A-2 Sec. 24-48 Board of Adjustment (in Track Change)

Section 24-44 Violations, penalties and enforcement of chapter provisions
(in Track Change)
Attachment A-1

Sec. 24-44 Violations, penalties and enforcement of chapter provisions.

(a) ~~Generally.~~ A person who violates any provision of this chapter or who shall make any false statement in any document required to be submitted under the provisions of this chapter shall be guilty of a misdemeanor. A misdemeanor is punishable by a fine and/or by imprisonment as established in Minnesota Statutes. Each day that a violation continues shall constitute a separate offense. *Circumstances Constituting a Violation/Violations Misdemeanors. Any person, partnership, association of one or more individuals, firm, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects, or refuses to comply with the provisions of this Ordinance, including violations of conditions established in connection with the granting of Variances, land use permits, land alteration and grading permits, and Conditional Use Permits, or fails to comply with restoration orders, or who knowingly makes any false statement in any document required to be submitted under the provisions hereof, shall be considered to be in violation of the ordinance and shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed 90 days, or both. Unless otherwise provided, each act of violation and every day on which such violation continues shall constitute a separate offense.*

(b) ~~Enforcement.~~ The Zoning Administrator is authorized to enforce this chapter through the proper legal channels. *Administrative Enforcement upon Determination of a Violation. Whenever the Zoning Administrator determines that any work, activity, construction, installation or use is being done or conducted contrary to the provisions of this Ordinance or any permit issued pursuant to this ordinance, the Zoning Administrator may issue an order to stop work directing such work, activity, construction, installation or use be stopped. The Zoning Administrator will notify the owner of the property and/or the permit holder of the violation through an order to stop work, which will be sent or delivered to the owner and/or permit holder. The order to stop work will identify, at a minimum, the following:*

- i. *The nature of the violation;*
 - ii. *The action required on the part of the property owner and/or permit holder to eliminate or resolve the violation;*
 - iii. *A reasonable time in which the violation must be remedied; and*
 - iv. *Inform the property owner and/or permit holder of their right to appeal the order to stop work and determination of the Zoning Administrator to the Board of Adjustment. Said appeal to proceed and be processed in the manner set forth in Section 24-48 of this ordinance, with the exception that the time to appeal an order to stop work to the Board of Adjustment shall be 10 business days from the date of the issuance of the order to stop work.-*
1. *Work that has been stopped under an order to stop work shall not be resumed until the reason for the work stoppage has been completely satisfied. The Zoning Administrator will notify the property owner when the work can be resumed.*

2. Violation of an order to stop work issued under this ordinance shall constitute a misdemeanor violation.
3. The failure of a property owner and/or permit holder to appeal the order to stop work of the Zoning Administrator shall result in the order to stop work being considered final under this ordinance.
4. If compliance with the order to stop work is not obtained within a reasonable period of time, the Zoning Administrator will report such violations to the County Attorney, who will take the action he or she deems appropriate on the matter.

(c) ~~Work stop order.~~ When a work stop order is instituted by the Zoning Administrator for any reason whatsoever, the work shall not again be resumed until the reason for the work stoppage has been completely removed. Violation of a work stop order constitutes a misdemeanor. **Civil Enforcement Procedures.** In the event of a violation or a threatened violation of the Ordinance, any permit issued under this Ordinance, or any regulation or other official control adopted by the Board, the Zoning Administrator, in addition to other remedies, may institute appropriate civil actions or proceedings to prevent, prosecute, restore, restrain, correct, or abate such violations or threatened violations, and it may be the duty of the County Attorney to institute such action.

(d) ~~Violation or a threatened violation of this chapter.~~ In the event of a violation or a threatened violation of this chapter, the Board of Commissioners or any of its members, in addition to other remedies, may request the County Attorney to institute appropriate actions or proceedings to prevent, restrain, enjoin, correct or abate such violations or threatened violations. **Other Enforcement Options and Remedies Available.** None of the enforcement options set forth in this section are meant to be the sole or exclusive means of enforcement procedures that the County may follow. The administrative enforcement process and the other enforcement procedures referred to in this section are in addition to any other right, remedy, or cause of action the County may have under Minnesota law to take actions, either civilly or criminally, to eliminate or resolve violations of this Ordinance. All such rights, remedies, and causes of action may, in the County's sole discretion, be exercised separately or in conjunction with one another and with such frequency as the County deems appropriate.

(e) ~~Writ of mandamus.~~ Any taxpayer of the county may institute mandamus proceedings in district court to compel specific performance by the proper officials of any duty required by this chapter. **Application to County Personnel.** The failure of any officer or employee of the County to perform any duty imposed by this Ordinance shall not subject the officer or employee to a penalty imposed for violation unless a penalty is specifically provided for such failure.

(f) ~~County sheriff duties.~~ The Board of Commissioners may request the county sheriff to perform such duties as may be necessary to enforce the provisions of this chapter.
(Ord. No. 100, § 24, 6-8-1996)

Section 24-48 Board of Adjustment
(in Track Change)
Attachment A-2

Sec. 24-48 Board of Adjustment.

(a) **Establishment.** ~~(a) *Establishment.* A Board of Adjustment is hereby established and vested with such authority as is hereafter provided and as provided by Minn. Stats. § 394.27.~~ There is hereby established the Blue Earth County Board of Adjustment which shall have duties and responsibilities as set forth herein and as provided for in Minnesota Statutes Chapter 394.

(b) ~~(b) *Organization and Membership.*~~ **Membership.**

~~(1) *Generally.* The Board of Adjustment shall consist of not less than three (3) nor more than seven (7) members of which at least one (1) shall be a member of the County Planning Commission and one (1) shall be from the unincorporated area of the County. Any elected officer or employee of the County shall be excluded from membership. The Board of Adjustment members shall be appointed by the Board of Commissioners for terms coinciding with terms of the County Planning Commission.~~

~~(2) *Potential conflict of interest.* No voting member of the Board of Adjustments shall have received, during the two (2) years prior to appointment, any substantial portion of income from business operations involving the development of land within the county for urban or urban related purposes.~~

~~(3) *Term of office; filling of vacancies and removal of office.* Members of the Board of Adjustment shall serve at the pleasure of the Board of Commissioners.~~

~~a. The term of office is three (3) years and may be continued in three (3) year terms at the discretion of the Board of Commissioners.~~

~~b. The Board of Commissioners shall make appointments to fill vacancies on the Board of Adjustment. Appointments to fill an unexpired term of office shall be for the remaining term of office. All other appointments shall be at the completion of a three (3) year term.~~

~~c. Members may be removed from office, prior to the completion of the term of office, by a majority vote of the Board of Commissioners.~~ The Board of Adjustment shall consist of either five (5) or seven (7) members who shall be appointed by the Blue Earth County Board of Commissioners. At least one (1) member shall be a voting member of the Planning Commission. At least one (1) member shall be a resident of the unincorporated portion of the County. No elected or appointed officer of the county, or employee of the Board of Commissioners, shall serve as a member of the Board of Adjustment.

1. Vacancies on the board of Adjustment shall be filled by the Board of Commissioners for the unexpired portion of the term. Vacancies exist due to any of the following circumstances: (1) death of a member; (2) resignation of a member; (3) removal of a member.

2. Questions of whether any particular issue or matter before the Board of Adjustment involves a conflict of interest sufficient to disqualify a member from voting therein shall be decided by a majority vote of all Board members, except the Board member being challenged.

(c) ~~Procedure.~~ **Term.**

- ~~(1) Officers.~~ The Board of Adjustment shall elect a chairperson and vice chairperson from among its members.
- ~~(2) Meetings.~~ The meetings of the Board of Adjustment shall be held at the call of the chairperson and at such other times as its rules of procedure may specify.
- ~~(3) Rules and public record.~~ The Board of Adjustment shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings and determinations.
- ~~(4) Secretary.~~ The Zoning Administrator shall act as secretary to the Board of Adjustment. Each member shall serve for a period of three (3) years. The term of each member shall begin on January 1 and shall 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.

(d) ~~Powers.~~ **Removal.**

- ~~(1) Powers.~~ The Board of Adjustment shall have power to grant a variance or an appeal to any of the provisions of this chapter to the extent of the following and no further:
- a. ~~To vary or modify the strict application of any of the regulations or provisions contained in this chapter in cases in which there are practical difficulties in the way of such strict applications; no variance or modification of the uses permitted within a district shall be allowed, except as otherwise provided in this chapter.~~
- b. ~~To hear and determine appeals as to the exact boundaries of land use districts.~~ The Board of Commissioners may remove a member for any of the following reasons:
1. Failure of a member to attend one-third (1/3) of the regularly scheduled meetings in any calendar year.
 2. Failure to attend 3 consecutive meetings without an excuse deemed reasonable by the Board of Commissioners.
 3. Attendance at less than the entirety of Board of Adjustment meetings to such an extent and with such frequency as to, in the opinion of the Board of Commissioners, render the member's services too little value to the County to justify continued membership on the Board of Adjustment.
 4. Violation by the member of any land use control ordinance adopted pursuant to the authority of Minnesota Statutes Chapter 394, or any permits issued thereunder.
 5. Inability to carry out the duties of a member due to a conflict of interest.
 6. Offensive, harassing or abusive behavior by a member either at meetings or under circumstances that the Board of Commissioners concludes negatively affects the ability of the member to perform the duties of the position.
 7. Any other conduct which in the determination of the Board of Commissioners negatively affects the ability of the member to carry out the duties of the position, or constitutes misconduct warranting removal.

(e) ~~Variances.~~ **Election of Officers.**

~~(1) Application.~~

- ~~a. *Generally.* Application for a variance or an appeal shall be made to the Zoning Administrator, together with the required fees.~~
- ~~b. *Site plan required.* The application shall be accompanied by a site plan and business/operation plan and such additional information as determined by Blue Earth County Environmental Services as necessary to show compliance with this chapter.~~
- ~~c. *Survey required.* A survey may be required indicating the proposed variance request to an established setback.~~
- ~~d. Variances may only be granted in accordance with Minn. Stats. § 394, as applicable. Any person may make an application to the Board of Adjustment for a variance from the literal provisions of this chapter in instances where the strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration, and where the difficulty is of a non-economic nature. No application for a variance will be accepted from landowners or on property on which there are unresolved outstanding violations or violations attributable to the conduct of the landowner or the landowner's agent. A variance may not circumvent the general purposes and intent of this chapter and it must be in harmony with the county land use plan.~~
- ~~e. *Time deadline for agency action.* All applications shall be processed in conformance with Minn. Stats. § 15.99 generally known as the 60 day rule.~~

~~(2) Notification and Public Hearing.~~

- ~~a. *Publication.* At least 10 days in advance of each public hearing, the Zoning Administrator shall cause a notice of the time and place of such hearing to be published in the official newspaper of the county.~~
- ~~b. *Notification.* All property owners of record within 500 feet of incorporated areas and/or 500 feet of the affected property or to the 10 properties nearest to the affected property, whichever would provide notice to the greatest number of owners of unincorporated areas where the variance is requested shall be notified by depositing a written notice in the U.S. mail, postage prepaid, as to the time and place of the public hearing. All municipalities within two (2) miles of the request shall be given proper notice.~~
- ~~c. *Omission in notification.* The Zoning Administrator shall be responsible for proper publication of notices and notification to adjacent property owners. However, an error in the published notice of public hearing or failure to notify a specific property owner of the application for a variance shall not be considered cause to declare the public hearing invalid.~~
- ~~d. *Public hearing.* Upon receipt in proper form of the application and other requested material, the Board of Adjustment shall hold at least one (1) public hearing in a location to be prescribed by the Board of Adjustment or Zoning Administrator in compliance with Minn. Stats. § 15.99 and Minn. Stats, § 394.~~

~~(3) *Board of Adjustment approval required.* Following any necessary public hearings, the Board of Adjustment shall make a decision upon the request for a variance.~~

~~(4) *Resubmittal of application following denial by the Board of Adjustment.* If a request for a variance is denied by the County Board of Adjustment, no new application shall be accepted by the Zoning Administrator for a 12-month period following denial if it is substantially the~~

same as, or similar to, that which was denied by the Board of Adjustment. The imposition of this 12-month period is intended to give the applicant time to reconsider the appropriateness of their proposal, to address concerns, and to encourage dialogue between the applicant and affected neighboring landowners. The Zoning Administrator may accept a new application, if in his or her opinion, new evidence or a change in conditions warrants it. The decision of the Board of Adjustment shall not be final, and any person having an interest affected by such ordinance shall have the right to appeal to the district court within 30 days on a point of fact or law.

(5) ~~Adverse environmental effect.~~ The applicant for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment may be required to demonstrate the nature and extent of the effect.

(6) ~~Imposition of conditions.~~ In granting any appeal or variance under the provisions of this section, the Board of Adjustment shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the chapter, regulation or provision to which the appeal or variance is granted.

(7) ~~Appeals.~~ The Board of Adjustment shall act upon all questions as they may arise in the administration of any ordinance or official control, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcing any ordinance adopted pursuant to the provisions of Minn. Stats. § 394.21 to 394.37.

a. Any aggrieved person objecting to the ruling of any administrative official on the administering of the provisions of this chapter or other ordinance adopted pursuant to the provisions of Minn. Stats. § 394.21 to 394.37, as amended, shall have the right to appeal to the Board of Adjustment.

b. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state.

c. The decision of the Board of Adjustment shall not be final, and any person having an interest affected by such chapter shall have the right to appeal to the district court within 30 days on a point of fact or law. The Board of Adjustment shall elect a chairman and vice chairman from among its members and shall appoint a secretary who need not be a member of the Board. It shall adopt rules of procedure for the transaction of its business, in whatever form it deems appropriate. The Board shall keep a public record of its proceedings, which shall include the minutes of its meetings, any findings it may make on matters before it, and action taken on each matter heard by it.

(f) **Findings required. Meetings and Quorum.**

(1) ~~Enumeration.~~ The Board of Adjustment shall not grant an appeal or a variance unless they find the following facts at the hearing where the applicant shall present a statement and evidence in such form as the Board of Adjustment may require:

a. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.

b. That the granting of the application will not result in any material adverse effect on the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant.

- ~~e. The applicant for a variance which, in the opinion of the Board of Adjustment, may result in a material adverse effect on the environment may be requested to demonstrate the nature and extent of the effect.~~
- ~~d. The variance is in harmony with the general purposes and intent of the official controls in cases when there are practical difficulties 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.~~
- ~~e. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls.~~
- ~~f. The plight of the landowner is due to circumstances unique to the property not created by the landowner. —~~
- ~~g. The variance will not alter the essential character of the locality.~~
- ~~h. Economic considerations alone do not constitute practical difficulties.~~ The meetings of the Board of Adjustment shall be held at the call of the Blue Earth County Zoning Administrator, or the call of the chairman of the Board of Adjustment, and at such other times as the Board in its rules of procedure may specify. A simple majority of the members shall constitute a quorum, and a majority vote of that quorum is sufficient to conduct business and take action. The chairman has full voting privileges at all times.

- (g) ~~**Recording.**~~ **Compensation.** The Zoning Administrator shall file a certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirement, decision or determination by an administrative official, or a request for a variance, with the land records department for record. The order issued by the Board of Adjustment shall include the legal description of the property involved.
(Ord. No. 100, § 21, 6-8-1996) The members of the Board of Adjustment may be compensated in an amount to be determined by the County Board and may be paid their necessary expenses in attending meetings of the Board and in conduct of the business of the Board.

- (h) **Powers and Duties of the Board of Adjustment.** The Board of Adjustment shall have the following duties.
1. Variances. The Board of Adjustment shall have the exclusive authority to order the issuance or denial of variances from the requirements of any official control, including restrictions placed on nonconformities.
 2. Administrative Appeals. The Board of Adjustment shall have the exclusive authority to hear and decide appeals from any order, requirement, decision or determination made by an administrative official charged with enforcing any Ordinance adopted under the authority of Minnesota Statutes Chapter 394.
 3. Official Map Appeals. The Board of Adjustment shall have the exclusive authority to hear and decide any appeals of a denial of a land use permit by the County Zoning Department due to the land's location on any official map, as set forth in, and under the procedures of, Minnesota Statute Section 394.361.

(i) **Procedures of the Board of Adjustment.**

1. Applications for any variance, any administrative appeal, and any official map appeals as described and set forth in Minnesota Statutes Section 394.361, shall be submitted to the County Planning and Zoning Office on forms provided by the office for each type of proceeding. They shall be accompanied by all information required to be included in a completed application, as determined by the County Zoning Administrator. They shall also be accompanied by the required application fee.

2. Administrative Appeal Applications.

Administrative appeals may be taken by any person, firm or corporation aggrieved, or by any officer, department, board or bureau of a town, municipality, county, or state. The appeal must be made within 30 calendar days from the date of the order, requirement, decision or determination being appealed by filing with the County Zoning Office a written notice of appeal. The notice of appeal shall be accompanied by any required fee. The notice shall state the following:

- a. the particular order, requirement, decision, or determination from which the appeal is taken;
 - b. the name and address of the appealing person or entity;
 - c. the specific grounds for the appeal, including all argument as to why the appealing person or entity believes the order, requirement, decision or determination being appealed was in error; and
 - d. the specific relief requested by the appealing person or entity.
3. The County Zoning Administrator shall refer any application to the Board of Adjustment for hearing and review after such application has been deemed complete.
 4. The Board of Adjustment will hold at least one public hearing on an application for a variance or an administrative or official map appeal, and provide notice thereof pursuant to the requirements and procedures as set forth in Minnesota Statutes Section 394.26. In its sole determination and discretion, the Board of Adjustment may hold additional public hearings on applications.

5. Decisions on Administrative Appeals.

The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken. In exercising this power the Board of Adjustment may direct the issuance of a permit or issue such other order as consistent with its decision on the appeal.

6. The applicant or the applicant's authorized representative of the applicant shall is encouraged to appear at the hearing on the request to present evidence and answer

questions.

7. In all variance proceedings before the Board of Adjustment, the burden of proof is on the applicant to show that the criteria for the granting of a variance is present.
8. In all administrative and official maps appeals it is the ~~applicant's burden~~ burden of the applicant to prove that the action of the Zoning Office was in error and should be reversed or modified.
9. An applicant for a variance must have an ownership interest in the property for which an application is made.
10. As authorized in Minnesota Statute § 394.362, the applicant for a variance which in the opinion of the Board of Adjustment may result in a material adverse effect on the environment may be required by the Board of Adjustment to demonstrate the nature and extent of the effect.

(j) Criteria for Granting Variances.

~~Variances shall only be permitted when the applicant establishes that they are in harmony with the purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties complying with the official control. As used in connection with a decision as to whether to grant a variance, practical difficulties 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. Economic considerations alone do not constitute practical difficulty.~~ A variance to a provision of the Zoning Ordinance may be issued to provide relief to the landowner in those zones where the intent of the applicable standards creates practical difficulties for the property owner in the use of their land.

No variance shall have the effect of allowing the Floodplain District a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by state law.

In order to grant a variance the Board of Adjustment must find that the following criteria are met A variance may be granted only in the event that all of the following circumstances exist:

1. ~~Is the variance request in harmony with the purpose and intent of the official controls and consistent with the County's comprehensive plan?~~ The variance is in harmony with the general purpose and intent of the official control.
2. ~~Is the property owner proposing to use the property in a reasonable manner not permitted by an official control?~~ The variance is consistent with the intent of the comprehensive plan.
3. ~~Is the need for the variance due to circumstances unique to the property and not created~~

by the current or prior property owners? The property owner proposes to use the property in a reasonable manner not permitted by an official control.

4. Will the issuance of the variance maintain the essential character of the locality? The plight of the landowner is due to circumstances unique to the property, not created by the landowner.

5. Does the need for the variance involve more than economic considerations? The variance will not alter the essential character of the locality.

5.6. The practical difficulty includes more than economic considerations alone.

(k) Additional considerations in situations involving after-the-fact variances.

In circumstances where a variance is sought to an official control after the work has already been begun or completed, in violation of one or more official controls, additional criteria may, in the discretion of the Board of Adjustment, be considered in determining whether to grant or deny the variance request. If the Board of Adjustment finds that all of the criteria set forth in section 24-47(j), parts 1 through 5, are met, then the following additional criteria may be considered and weighed by the Board of Adjustment in determining whether to grant or deny the request: In consideration of an after-the-fact variance request, and in addition to the criteria listed in Section 24-48 (j), the Board of Adjustment shall take into consideration and weigh the following:

1. Why did the applicant fail to obtain the required permit or comply with the applicable official control before commencing work? Was there any attempt to comply with the applicable Official controls? Whether or not the applicant acted in good faith or attempted to comply with the ordinance.

2. Did the applicant make a substantial investment in the property before learning of the failure to comply with the applicable official controls? Whether a substantial investment of money has been made.

3. Did the applicant complete the work before being informed of the violation of applicable official controls? Whether the construction is fully completed.

4. Are there Whether there are similar structures in the area?.

5. Based on all of the facts, does it appear to the Board of Adjustment that the applicant acted in good faith?

6.5. Would the benefit to the county appear to be outweighed by the detriment the applicant would suffer if forced to remove the structure? Whether the benefit of the county is outweighed by the burden on the applicant, if the applicant is required to comply with the ordinance.

(l) Other provisions relating to variances.

1. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
2. The Board of Adjustment may impose conditions on the granting of any variance. Conditions are to be directly related to the variance, bear a rough proportionality to the impact created by the variance, and shall be what the Board of Adjustment considers reasonable and necessary to protect the public health, safety and welfare.
3. A variance shall expire and be considered null and void two years after the issuance of the variance if the use, actions or construction authorized by virtue of the variance has not yet begun. For purposes of this section, construction shall include significant site preparation work including land clearing, excavation, and the installation of utilities necessary for the placement, assembly, or installation of utilities or equipment, the installation of footings, slab, foundation, posts, walls or other portions of a building.

The County Zoning Administrator may, in his or her sole discretion, grant one extension of this time period for up to one year upon a written request of the property owner, if the written request is received at least 30 days prior to the expiration of the two year period, and if the County Zoning Administrator determines that reasonable cause for the extension exists.

4. A variance application may not be resubmitted for a period of at least one year from the date the request is denied, unless the Zoning Administrator determines in his or her sole discretion that the application is substantially changed from the earlier denied request, or that there is new evidence, or that in the opinion of the Zoning Administrator a substantial change of circumstances exists.
5. A certified copy of any order issued by the Board of Adjustment acting upon a request for a variance, or upon any appeal from an order, requirement, decision or determination by an administrative official, shall be recorded with the County recorder. The order issued by the Board of Adjustment shall include the legal description of the property involved. The Zoning Administrator shall be responsible for the recording of such orders.

Secs. 24-49--24-80 Reserved.