

Section 525 - Zoning: administration and enforcement

525.01. Enforcing officer. The zoning administrator is appointed by the manager and is responsible for enforcing and administering this code.

525.03. Building permit. No structure shall be erected, or structurally altered in the city until a building permit is issued for the structure. No building permit shall be issued except in conformance with an approved conditional use permit or certificate of occupancy application as applicable.

525.05. Zoning administrator duties. The zoning administrator shall:

- a) conduct inspections of buildings and use of land to determine compliance with the terms of this code and to that end is hereby authorized and empowered to enter into or upon the premise for such purpose with or without the owner or occupant thereof;
- b) maintain permanent and current records of this code, including but not limited to, all maps, amendments and conditional uses, variances, appeals, certificates of occupancy and application thereof;
- c) receive, file and forward all applications for amendments, variances, conditional use or other matters to the commission and council;
- d) institute in the name of the city any appropriate actions or proceedings against a violator as provided by law;
- e) establish and enforce necessary or desirable regulations, in writing, clarifying or explaining any provision of this code;
- f) maintain a record of each non-conforming use indicating the type of use, square footage in use, number of employees and other pertinent information as considered necessary to establish the size and scale of the non-conforming use; the record shall be furnished the owner of the use on request.

525.07. Variances. Subdivision 1. Application. Applications for variances are filed with the zoning administrator. The application must state the exceptional conditions of the lot and the peculiar and practical difficulties claimed as a basis for a variance.

Subd. 2. Hearing. Applications for variances shall be referred by the zoning administrator to the board which shall hear the applicant, or representative thereof, at its next regular meeting, provided all necessary data has been submitted. The board shall recommend such conditions relating to the granting of a variance as it deems necessary to adjust the hardship or special situation so as to carry out the intent and purpose of this code or shall recommend denial of the request. (Amended Ord. No. 87-601)

Subd. 3. Findings; issuance of variance. Prior to the board formulating a decision and the conditions in support thereof, it must find that the literal enforcement of the provisions of the zoning ordinance would cause an undue hardship because of circumstances unique to the individual property under consideration, and that the granting of a variance to the extent necessary to compensate for said hardship is in keeping with the intent of this code.

Subd. 4. General rule. The board shall not permit any use which is not permitted under the code for property in the zone which applies to the land under consideration.

Subd. 5. Action by the board. The board shall forward its recommendation 50 days after the applicant has filed a completed application for a variance unless the City notifies the applicant of an extension for an additional 60 days or the applicant agrees to a continuance. (Amended Ord. 87-601 & Ord. 97-797)

Subd. 6. Action by the council. Upon receiving the recommendation of the board or if no recommendation has been transmitted, the council shall place the request on its agenda for the next regular meeting. (Amended Ord. 97-797)

Subd. 7. Expiration. Within one year after the approval of a variance or appeal the property owner or applicant has not substantially started the construction of any building, structure, addition or alteration requested as part of the approval, said variance shall become null and void unless an application for extension of the approval has been submitted in accordance with this subsection. A letter to extend the approval of a variance or appeal shall be submitted to the Zoning Administrator not less than thirty (30) days before the expiration of said approval. Such letter shall state the facts of the request, showing a good faith attempt to utilize the variance, and it shall state the additional time being requested to begin the proposed construction. The City Council may grant extensions not to exceed one year. (Added Ord. No: 87-601)

525.09. Amendments. Subdivision 1. Vote. The council may from time to time, adopt amendments to this code.

Subd. 2. Initiation of amendment. The council or the commission may, upon its own motion, initiate a request to amend this code. A property owner may petition the council to amend the district boundaries affecting the property or a larger parcel which includes the property.

Subd. 3. Application. Applications for amendments initiated by a property owner shall be filed with the zoning administrator. When the application involves the changing of zoning districts and boundaries thereof, it shall be accompanied by a map or plat showing the lands proposed to be changed and all lands within 350 feet of the boundaries of the property proposed to be rezoned, together with the names and addresses of the owners of the land in such area. (Amended Ord. 97-797)

Subd. 4. Rezoning. Rezoning designed to enlarge or relocate any established business or industrial district may be enacted only as an amendment changing the boundary line of the district on the zoning map and such change shall conform to the provisions of the comprehensive development plan.

Subd. 5. Referral to commission. All completed applications for amendments shall be referred to the commission which shall hold an official public hearing within 50 days of the date from the receipt of a completed application. (Amended Ord. 97-797)

Subd. 6. Hearing. The zoning administrator shall cause to be published a notice of public hearing in the official newspaper at least ten days but not more than 30 days prior to the date of the hearing.

Subd. 7. Action by the commission. If the request is for a district change, notices shall be mailed to all owners of property within 350 feet of the parcel included in the request, such ownership to be determined by the listing in the files of the city assessor, not less than ten days prior to the hearing. Failure of a property owner to receive notice shall not invalidate any such proceedings as set forth within this code. The commission shall make its recommendation to the council within 50 days after the applicant has submitted a completed application unless the applicant files a request in writing for an extension with the Zoning Administrator or the city notifies the applicant of a 60-day extension period. (Amended Ord. No. 87-601 & Ord. 97-797)

Subd. 8. Council action. After recommendation is forwarded to the City Council from the commission, the item will be placed on the council agenda for its next regular meeting, at which time the council shall hear the item. Notice of council action shall be given to the applicant by the zoning administrator. The City Council will act on the item within 60 days from the receipt of a completed application unless the City notifies the applicant of a 60-day extension period or the applicant agrees to a continuance. (Amended Ord. 97-797)

525.11. Certificate of occupancy. Subdivision 1. General rule. No building or structure hereafter erected or moved, or that portion of an existing structure or building erected or moved shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy shall have been issued by the Building Inspector stating that the building or structure complies with all of the provisions within this Ordinance. (Amended Ord. No. 87-601)

Subd. 2. Application. The application for a certificate of occupancy shall accompany the application for a building permit and shall be issued when the zoning administrator has found the use and the conditions of the development in conformance with this code.

525.13. Conditional use permit. Subdivision 1. General rule. Certain uses, may or may not be suitable in a particular zoning district, depending upon the suitability of the circumstances. When such circumstances are found to exist, and the use will not adversely affect the health, safety or general welfare of residents of the surrounding area or the community as a whole, a conditional use permit may be granted. Conditions may be applied to the granting of the permit and periodic review of the permit may be required. The permit shall be granted for a particular use and not for a particular person. The cancellation of a conditional use permit, if not protected by nonconforming use rights, shall be considered equivalent to a rezoning, and the procedural requirements of a rezoning apply. (Amended Ord. No. 93-727)

Subd. 2. A conditional use permit is required whenever:

- a) the proposed use is specified as a conditional use, provided that a new conditional use permit or amendment to an existing conditional use permit shall not be required for I) remodeling or improvement to the interior of an existing conditional use that does not change the nature or increase

the intensity of such use, or ii) changes in an existing conditional use that are determined to be non-significant under the provisions of Subdivision 14 of this ordinance (Amended Ord. No. 2000-833); or

b) the proposed use is listed as requiring, under either the general or special provisions of this code, a conditional use permit. (Amended Ord. 04-913)

Subd. 3. Application. The application for a conditional use permit must contain at least the following data:

- a) site plan showing location of all buildings and structures with dimensions;
- b) planting plan showing location, species and size of all plant material;
- c) landscape plan showing pathway system, width and material, screening fences with detail, lighting system, and recreational features, if any;
- d) drainage plan indicating catch basins and underground improvement;
- e) utility systems for sanitary sewer, water, gas, telephone and electric which shall all be underground for new construction;
- f) off-street parking, drives and access plan;
- g) off-street loading plan, if any is necessary;
- h) location of trash container, screening and type of material for screening of the trash container and pick-up plan; (Amended Ord. 94-747)
- i) plan for adjustment to existing rights-of-way, easements, utilities and new dedications; and
- j) architectural plans showing elevations, entrances, heights, floor plans and material to be used on the exterior.

Subd. 4. Preliminary concept plan. The applicant may request a preliminary hearing with the commission in connection with a conditional use permit application to explore the concept ideas and all other pertinent general information. The request shall be accompanied with at least the same information set forth in subdivision 2, and such other information as the zoning administrator and the building official may require. If such preliminary plan is recommended or approved by the zoning administrator, the final plan shall be scheduled for a public hearing. (Amended Ord. No. 04-913)

Subd. 5. Filing. Applications for conditional use permit shall be filed with the zoning administrator with such filing fee as may be from time to time established by resolution of the council. (Amended Ord. No. 87-601) (Amended Ord. No. 04-913)

Subd. 6. Expiration. A conditional use permit expires one year after it has been issued unless the use for which the permit has been granted is in effect. Extensions may be granted provided the applicant submit a letter to the Zoning Administrator requesting an extension 30 days before the expiration of said approval. The letter shall state the facts of the request, showing a good-faith attempt to utilize the Permit, and it shall also state the additional time being requested to begin the proposed construction. The City Council may grant extensions not to exceed one year. (Amended Ord. No. 87-601) (Amended Ord. No. 04-913)

Subd. 7. Public hearing. At least ten (10) days before the date of a Public Hearing a notice of said hearing shall be mailed to the owners of all property within three hundred fifty (350) feet of the subject property. The records of the City Assessor shall be deemed sufficient for determining the location and ownership of all such properties. The notice of Public Hearing shall include the time and place of the hearing, the specific request to be considered, any proposed use of the property different then its existing use, the property's current zoning classification, the legal description of the property, and the property's street address, if applicable. The Planning Commission shall hold the Public Hearing on an application at its first regular meeting following appropriate legal notice. The applicant and/or his representative shall appear before the Planning Commission at this hearing to answer questions regarding the request. (Amended Ord. No. 87-601) (Amended Ord. No. 04-913)

Subd. 8. Commission recommendation. Within fifty (50) days following the submission of a completed application for a conditional use permit the Planning Commission shall forward a recommendation on the application to the City Council, and it shall recommend approval of the application as submitted, approval of the application subject to certain modification or conditions therein, or disapproval of the application. The Commissions recommendation shall be in resolution form stating said findings in support or opposition to request as filed or amended. If no action on an application is taken by the Planning Commission with fifty (50) days, and there has been no delay caused or requested by the applicant, or the City has not notified the applicant the item will be continued for up to an additional 60 days, the application shall be forwarded to the City Council without comment. (Amended Ord. No. 87-601 & Ord. 97-797) (Amended Ord. No. 04-913)

Subd. 9. Purpose. The requirements are in connection with the application for a conditional use permit are deemed necessary by the council because a substantial depreciation of values in the neighborhood where such construction is proposed as well as in and to the city at large, occurs or may occur to the detriment of the general public welfare if such construction or alteration contains exterior facing materials which are either temporary or are not of a permanent nature or have a tendency to deteriorate rapidly or may be easily disfigured, marred or damaged, or which for any reason may rapidly become unsightly in appearance; examples of which materials being, but not limited to the following: concrete masonry units, common clay tile, tar paper or other similar building composition sheet materials, either corrugated or plain and exposed unfinished concrete unless some or all of such materials are constructed and used in a special arrangement or combination with other materials of a permanent nature with sound architectural design. (Amended Ord. No. 04-913)

Subd. 10. Approval by building official. When an application is made for the building of a structure requiring a conditional use permit, the applicant or owner may present to the building official a request for approval for the use of such materials as hereinabove set forth, and in connection therewith shall file such preliminary or final sketches, samples and any other information as may be necessary to indicate accurately the use to be made of such materials and the location and appearance of such materials and of the exterior of such structure when completed. The building official may grant approval for the use of such materials based upon all such information, sketches and applications required hereunder, which data shall be filed by him and shall become part of the building permit together with all other additional information required by this code or by other ordinances of the city showing compliance therewith and in conformity with such sketches and other information. (Amended Ord. No. 04-913)

Subd. 11. Appeal. When the building official denies a building permit or a request for preliminary approval, which denial is based upon the location, use or nature of the materials intended to be used, the applicant may submit a request on or before 30 days from the date of the denial for a review of the application and the denial thereof to the commission without payment of any additional filing fees. The commission may overrule the building official or it may by negotiation and agreement amend or otherwise modify the plan or materials to be used and thereupon grant such permit. (Amended Ord. No. 04-913)

Subd. 12 Land Use. An application for a conditional use permit for a parcel for which the zoning is contrary to the land use designation in the comprehensive plan must be accompanied by an application for an amendment to the comprehensive plan. If an environmental assessment worksheet is required, no site and building plan approval shall be granted until the environmental assessment worksheet has been received and a negative declaration for an environmental impact statement has been made by the planning commission. If an environmental impact statement is required, no site and building plan shall be approved until the environmental impact statement has been prepared. (Added Ord. No. 87-601) (Amended Ord. No. 04-913)

Subd. 13 Development agreement. A conditional use permit may require a development agreement to be signed by the City and the developer. (Added Ord. 2000-841) (Amended Ord. 04-913)

Subd. 14 Amendments. Holders of the Conditional Use Permits may propose amendments to the permit at anytime, following the procedures for a new permit as set forth in this Section, except where administrative approval may be granted by the Zoning Administrator. No significant changes in the circumstances or scope of the permitted use shall be undertaken without approval of those amendments by the City. The Zoning Administrator shall determine what constitutes significant change. Changes include, but are not limited to hours of operation, number employees, expansion of structures and/or premises, different and/or additional signage, and operational modifications resulting in increased external activities and traffic, and the like. The Planning Commission may recommend, following the procedures for hearing and review set forth in this section and the City Council may approve significant changes and modification to Conditional Use Permits, including the application of additional or revised conditions. (Added Ord. No. 87-601) (Amended Ord. 04-913)

Subd. 15 Standards. In evaluating a Conditional Use Permit application and granting a Conditional Use Permit, the Planning Commission and City Council shall consider and require compliance with the following standards, conditions and requirements: (Amended Ord. 2000-833) (Amended Ord. 04-913)

- a) the consistency with the elements and objectives of the City's development plan, including the comprehensive plan and any other relevant plans at the time of the request.
- b) consistency with this ordinance;
- c) creation of a harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development;

d) creation of a functional and harmonious design for structures and site features, with special attention to the following:

- 1) an internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors and the general community;
- 2) the amount and location of open space and landscaping;
- 3) materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and
- 4) vehicular and pedestrian circulation, including walkways, interior drives and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangements and amount of parking. (Amended Ord. 2000-833)

e) promotion of energy conservation through design, location, orientation and elevation or structures, the use and location of glass in structures and the use of landscape materials and site grading;

f) protection of adjacent and neighboring properties through reasonable provision for surface water drainage sound and sight buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses and;

g) the use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor tend to or actually diminish and impair property values within the neighborhood. (Added Ord. No: 87-601)

h) in institutional zoning districts, the Conditional Use Permit application shall comply with the standards, conditions and requirements stated in Section 542.03 of this Ordinance. (Added 2000-833)

i) traffic impacts such as increases in vehicular traffic, changes in traffic movements, traffic congestion, interference with other transportation systems or pedestrian traffic, and traffic hazards shall be considered by the Planning Commission and City Council in evaluating an application for a Conditional Use Permit. The applicant shall demonstrate the proposed conditional use shall not cause unacceptable increases in vehicular traffic, traffic congestion or interference with other transportation systems or pedestrian traffic, and will not create traffic hazards or excessive traffic through residential areas or otherwise cause adverse effects on residential areas or dwellings. The City may require the applicant to submit a traffic study prepared by a traffic consultant approved by the city to demonstrate the applicant's compliance with the requirements of this paragraph. As a condition of the issuance of a Conditional Use Permit, the City may require the applicant to incorporate in the applicant's proposal and construct such traffic control measures and improvements as the City may deem necessary, including but not limited to directional signalization, channelization, stand-by turn lanes, sidewalks, removal of access points to public streets and moving of access points to public streets. (Added 2000-833)

j) a development in the B-2 zoning district may require a parking study. If it is determined that a project requiring a conditional use permit will have a parking shortage, the City may require that the applicant provide on-site parking, enter into an agreement to pay the costs of off-site parking, or a combination of both. (Add Ordinance 2002-874)(Amended Ord. 04-913)

Subd. 16. Conditions on Issuance. The Council may impose conditions and require guarantees in the granting of conditional use permits. Any use permitted under the terms of any conditional use permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. (Added Ord. No. 93-727) (Amended Ord. 04-913)

Subd. 17. Expiration of use. If a use granted by conditional use permit to operate ceases to exist for six months, the conditional use granted for that property will expire. (Added Ord. 95-777 [1-3-96]) (Amended Ord. 04-913)

525.14. Interim uses. Subdivision 1. Interim uses are allowed in all zoning districts. The City Council may set conditions on interim uses. The City Council may grant permission for an interim use of property if:

- a) the use conforms to the zoning regulations;
- b) the date or event that will terminate the use can be identified with certainty;
- c) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future;
- d) the user agrees to any conditions that the governing body deems appropriate for permission of the use. An interim use may be terminated by a change in zoning regulations.

Subd. 2. Public hearing. At least ten (10) days before the date of a Public Hearing a notice of said hearing shall be mailed to the owners of all property within three hundred fifty (350) feet of the subject property. The records of the City Assessor shall be deemed sufficient for determining the location and ownership of all such properties. The notice of Public Hearing shall include the time and place of the hearing, the specific request to be considered, any proposed use of the property different than its existing use, the property's current zoning classification, the legal description of the property, and the property's street address, if applicable. The Planning Commission shall hold the Public Hearing on an application at its first regular meeting following appropriate legal notice. The applicant and/or his representative shall appear before the Planning Commission at this hearing to answer questions regarding the request. (Added Ord. 89-656)

525.15. Board of adjustments and appeals. Subdivision 1. Designated. The commission is the board of adjustments and appeals pursuant to and with the duties and powers set forth in Minnesota Statutes, sections 462.351 through 462.363.

Subd. 2. Procedure. At the board's July meeting, the board shall elect from its membership a chair and vice-chair. The board shall formulate and adopt rules of procedure. Meetings of the board shall be scheduled once each month at a time and place to be specified in the rules and procedures. There shall be a fixed place of meeting. Meetings are open to the public. (Amended Ord. 96-787)

Subd. 3. Appeals. The board shall hear and consider only appeals submitted in writing from any action relative to this code taken by the city administrative staff, which appeal shall be filed not later than 90 days from the date of such staff determination. The board shall make its findings an order thereon not later than 60 days from such appeal unless the time is extended by written mutual agreement of the parties or the City notified the applicant of a 60-day extension. Failure by the board to act within the time set forth above is a determination in favor of the applicant. (Amended Ord. 97-797)

Subd. 4. Variances. The board shall hear and consider all requests for variances and make recommendations in writing thereon to the council. All actions hereunder shall be by resolution containing findings and recommendations and shall be made by the board not later than 50 days from the date of the filing of the completed application for any such variance unless said time is extended for an additional 60 days by notification by the City or by mutual agreement in writing by all parties. Failure of the board to act within the time set forth above is a referral thereon to the council without recommendation. (Amended Ord. 97-797)

Subd. 5. Filing. Copies of all resolutions, findings and orders including minutes showing action of the board shall be filed with the clerk and manager who shall notify all concerned parties.

525.17. Time limit. A request for a variance, conditional use permit or zoning amendment which has been denied shall not be considered until a period of six months has elapsed unless the commission finds that the conditions or other factors present at the time of denial have substantially changed.