



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
February 22th, 2023
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve January 25 2024 PC Meeting Minutes* (pp. 2-3)
- B. Review and Update Variance Findings Form* (pp. 4-14)
 - 1. Review LMC Examples* (pp. 4-10)
 - 2. Update Variance Findings Form* (pp. 11-14)

ADJOURN

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 1/25/2024

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: — Andy Sorenson - Chairman, Michelle Maiers-Atakpu, Michael Kraemer, Michael McKenzie arrived 7:05

COMMISSIONERS ABSENT: none

OTHERS PRESENT: none

TO ORDER: Meeting called to order by Chairman Andy Sorenson at 7:01PM.

1. PUBLIC FORUM
 - a. none
2. APPROVE AGENDA
 - a. Motion by Maiers-Atakpu, 2nd by Kraemer to approve agenda. Vote: Yes -3, No – 0. Motion to approve agenda passed.
3. REGULAR AGENDA
 - a. Item A – Review/Approve December 28, 2023 Planning Commission Meeting Minutes as modified.
 - i. Motion by Maiers-Atakpu , 2nd by Kraemer, to approve the minutes with edits. Vote: Yes – 3, No – 0, Motion to approve the minutes as modified passed.
 - b. Item B – Review Draft of Permit, CUP, and Variance Process Documents
 - i. Planning Commission Recommendations:
 1. Planning Commission likes the concept of the process description.
 2. PC suggests that the process narrative be divided into three separate process sheets on the Village website.
 3. CUP Process– Item #4
 - a. Remove the statement – “Establish Needs”
 4. *CUP Process – Item #5*
 - a. Swap the order of the last two sentences in this item
 5. *Variance Process – add Item #10*
 - a. *Consider adding details that explains how the applicant must work with City staff (engineer, building official, planner) to determine who will verify and check in the field (during construction) the variance details and conditions. (I.e., setback dimensions, drainage, pervious paver construction, retaining wall design, rain garden construction, etc.,)*

6. *Variance Process – add Item #11*

- a. *Consider adding requirement that applicant shall submit “as-built” survey and testing documentation that verifies the location, dimensions, and testing results for the “conditions” identified in the variance approval. (I.e., location and dimensions of required rain gardens or pervious paver operation, building location and set back compliance, impervious surface removal as proposed in application documents. The coordination and scheduling of needed visits by Village staff (engineer, planner, building official) shall be the responsibility of the applicant.*

c. **Item C – Review and Update of Variance Finding Form**

- i. Planning Commission offers the following “draft” edited Variance Finding Form attached to minutes. (Edits are proposed in “red”.)

d. **Additional Planning Commission Action – Election of Officers for 2024.**

- i. Motion by McKenzie, 2nd by Maiers-Atakpu to appoint Andy Sorenson – Chairman – Vote: Yes - 4. No – 0, Motion passed.
- ii. Motion by Sorenson, 2nd by Maiers-Atakpu to appoint Michael Kraemer – Secretary – Vote: Yes – 4, No – 0. Motion passed.

4. **ADJOURN 8:46 PM**

- a. Motion by Sorenson, 2nd by Maiers-Atakpu, 2nd to adjourn meeting. Vote: Yes - 4, No – 0. Motion passed.

Resolution Adopting Findings of Fact, LMC Model Resolution

League staff thoughtfully develops models for a city's consideration. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background on this model may be found in League information on ["Land Use Variances."](#)



This icon marks places where the city must customize the model. They offer additional provisions, optional language, or comments for your consideration. The icon, and language you do not wish to include, should be deleted from this model before use. Make other changes, as needed, to customize the model for your city.

RESOLUTION NO. _____

A RESOLUTION ADOPTING FINDINGS OF FACT AND REASONS FOR _____ FOR VARIANCE APPLICATION OF _____ AT _____



Insert either "approval" or "denial" in the first blank. Insert the applicant's name and address in the second and third blanks.

FACTS

1. _____ is the owner of a parcel of land located at _____; and,



Insert the applicant's name in the first blank, and the address including city and state in the second blank.

2. The subject property is legally described as found on Exhibit A; and,

3. _____ has applied to the City for a variance to build _____ as described on Exhibit B



Insert the applicant's name in the first blank and the proposed project in the second blank.

4. The proposal would vary from (Ordinance Requirement) in that it would (Deviation Sought).



Insert the ordinance requirement in the first blank and the deviation sought in the second blank.

5. Following a public hearing on the application, the _____ Planning Commission has recommended (approval/denial) of the variance on (date).



Insert the city's name in the first blank; either "approval" or "denial" in the second blank and the date of the Commission's action in the last blank.

6. The City Council of the City of _____ reviewed the requested variance at its Meeting of _____.




Insert the city's name in the first blank and the month, day and year of the council meeting in the next blank.




Add more facts about the project using additional numbers as may be necessary and relevant.


APPLICABLE LAW


- 7. Minnesota Statute Section 462.357, subd. 6 provides:
 - a. Variances shall only be permitted (a) when they are in harmony with the general purposes and intent of the ordinance and (b) when the variances are consistent with the comprehensive plan.
 - b. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. “Practical difficulties,” as used in connection with the granting of a variance, means that (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) the variance, if granted, will not alter the essential character of the locality.


- 8. City Ordinance allows variances if _____
 *Cite to relevant city variance standard, if applicable.*


- 9. City Ordinance requires _____
 *Cite to applicable ordinances, including that being varied from.*


CONCLUSIONS OF LAW

- 10. The requested variance _____ in harmony with the purposes and intent of the ordinance because _____
 *Insert either “is” or “is not” in the first blank, and your reasons in the second blank.*

- 11. The requested variance _____ consistent with the comprehensive plan because _____
 *Insert either “is” or “is not” in the first blank, and your reasons in the second blank.*

- 12. The property owner _____ propose to use the property in a reasonable manner because _____.
 *Insert either “does” or “does not” in the first blank, and your reasons in the second blank.*

- 13. There _____ unique circumstances to the property not created by the landowner because _____.
 *Insert either “are” or “are not” in the first blank, and your reasons in the second blank.*

- 14. The variance _____ maintain the essential character of the locality because _____.
 *Insert either “will” or “will not” in the first blank, and your reasons in the second blank.*

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF _____, MINNESOTA AS FOLLOWS:

The application to issue a variance to allow _____ to build _____ so as to deviate from _____ is hereby _____.



Insert the applicant's name in the first blank, the proposed project in the second blank, the ordinance requirement in the third blank, and either "approved" or "denied" in the last blank.

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk

Requirements for issuance of a zoning variance, LMC Model Ordinance

League staff thoughtfully develops models for a city's consideration. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background on this model may be found in League information on ["Land Use Variances."](#)

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF VARIANCES WITHIN THE CITY OF _____

The City Council of _____, Minnesota ordains:

SECTION 1. BOARD OF APPEALS AND ADJUSTMENTS

SUBD. 1. The Planning Commission shall be the Board of Appeals and Adjustments for this city, and as provided by Minn. Stat. Sec. 462.354, subd. 2 shall have the powers granted under Minn. Stat. Sec. 462.357, subd. 6, as they may be amended from time to time.

SECTION 2. VARIANCES

SUBD. 1. Pursuant to Minn. Stat. Sec. 462.357, subd. 6, as it may be amended from time to time, the Planning Commission, acting as a Board of Appeals and Adjustments, may issue variances from the provisions of this zoning code. A variance is a modification or variation of the provisions of this zoning code as applied to a specific piece of property.

SUBD. 2.

A. Variances shall only be permitted

- i. when they are in harmony with the general purposes and intent of the ordinance and
- ii. when the variances are consistent with the comprehensive plan.

B. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance.

SUBD. 3. "Practical difficulties," as used in connection with the granting of a variance, means that

- i. the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- ii. the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- iii. the variance, if granted, will not alter the essential character of the locality.
- iv. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

SUBD. 4. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments may not permit as a variance any use that is not allowed under the zoning ordinance

for property in the zone where the affected person's land is located. The board may permit as a variance the temporary use of a one family dwelling as a two-family dwelling. The board 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.

SECTION 3. EFFECTIVE DATE

SUBD. 1. This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City Clerk

Variance Application, LMC Model Form

League staff thoughtfully develops models for a city's consideration. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background on this model may be found in League information on "[Land Use Variances](#)."

CITY OF _____ VARIANCE APPLICATION

A. Applicant's Name: _____ Telephone _____
Home: _____
Work/Cell: _____

B. Address (Street, City, State, ZIP): _____

C. Property Owner's Name (If different from above): _____ Telephone _____
Home: _____
Work/Cell: _____

D. Location of Project: _____

E. Legal Description: _____

F. Description of Proposed Project: _____

G. Specify the section of the ordinance from which a variance is sought: _____

H. Explain how you wish to vary from the applicable provisions of the ordinance: _____

I. Please attach a site plan or accurate survey as may be required by ordinance.

J. Please answer the following questions as they relate to your specific variance request:

1. In your opinion, is the variance in harmony with the purposes and intent of the ordinance?

Yes () No () Why or why not?

2. In your opinion, is the variance consistent with the comprehensive plan?

Yes () No () Why or why not?

3. In your opinion, does the proposal put property to use in a reasonable manner?

Yes () No () Why or why not?

4. In your opinion, are there circumstances unique to the property?

Yes () No () Why or why not?

5. In your opinion, will the variance maintain the essential character of the locality?

Yes () No () Why or why not?

The Planning Commission must make an affirmative finding on all of the five criteria listed above in order to grant a variance. The applicant for a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The undersigned certifies that they are familiar with application fees and other associated costs, and also with the procedural requirements of the City Code and other applicable ordinances.

Applicant's Signature:

Date:

Fee Owner's Signature:

Date

BIRCHWOOD VILLAGE

Variance Findings Form

~~EACH OF THE FOLLOWING CRITERIA MUST BE SATISFIED TO APPROVE~~

#1: Is the request ~~in harmony~~ reasonable with the general purposes and intent of the ordinance?

The specific Ordinance

states _____

(state ordinance requirement), **the purpose of which is to** _____

_____ (explain what the ordinance requirement is intended to prevent or protect).

The proposed variance is

for: _____

_____ (explain proposal and potential effects).

This variance **is/is not** in ~~harmony~~ reasonable with the ~~general~~ purpose and intent of the specific Ordinance **because:** _____

_____ (explain how the proposal is ~~in harmony~~ reasonable with or undermines the purpose of the ordinance).

Consider deleting this question altogether unless City attorney suggest otherwise. #2:-How-Would granting the variance be reasonably consistent with the comprehensive plan?

~~The Comprehensive Plan contains the following policies and goals regarding this request:~~ _____

_____ (list applicable policies, goals, and maps, including citations).

~~Granting the variance is/is not consistent with the comprehensive plan~~

~~**because:** _____~~

_____ (explain how; relate details of the request to specific policies, goals, and maps).

#3: Are there special conditions or circumstances that are peculiar to the land, structure, or building involved?

There **are/are no** circumstances unique to the property that would prevent compliance with the specific Ordinance

because: _____

(describe any physical characteristics of the land that are unique to this property that prevent compliance with the ordinance requirement, and whether the applicant has demonstrated that no other reasonable alternative exists that would comply with the ordinance; explain what makes this property different from other properties to justify why this applicant should be able to deviate from the ordinance when others must comply).

#4: Were the special conditions or circumstances created by the applicant's action or design solution?

The conditions that resulted in the need for the variance were/were not created by the applicant

because: _____

_____ (if there are special conditions or circumstances, describe whether they were created by some action of the applicant/property owner).

#5: Will granting a variance result in any increase in the amount of water draining from the property?

Granting the variance **will/will not** increase the amount of water that drains from the property **because:**

_____ (if granting the variance will increase the amount of water that drains from the property, explain how and how much it will increase).

#6: Will granting the variance impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City?

Granting the variance will/will not impair light and air to adjacent property, or diminish or impair property values in the area, or impair the public health, safety, or welfare of Birchwood residents **because:** _____

_____ (if granting the variance could be detrimental to neighbors or other Birchwood residents, explain how).

#7: A variance must not be granted *simply because there are no objections or because those who do not object outnumber those who do?*

Has this variance been granted only because of the number of objections to the request: Yes No

Explain: _____

_____ (If you believe that the decision has been determined simply because of the number of supporters or objections, explain how).

#8: ~~Does~~ *Is the applicant proposing a reasonable use for the property exist under terms of the Zoning Code?*

Reasonable use for the property does/does not exist under terms of the Zoning Code

because: _____

_____ (Describe how the Zoning Code does or does not allow for reasonable use of the property. If reasonable use of the property does exist under terms of the Zoning Code, the applicant's financial gain or loss shall not be considered in your decision).

What is your ~~decision~~ *recommendation?* (Approve or Deny)

Remember - ALL criteria MUST be satisfied to approve.

If approved, what conditions will you impose? (Findings must support the conditions; explain the impacts of the proposed development and the conditions that address those impacts. Remember that findings must be directly related and proportional to the impacts created by the variance. Set specific timeframes and deadlines, and consider requiring the following to help ensure compliance with the conditions:

- *financial sureties to ensure that the required activities are completed within specified deadlines,*
- *as-built drawings and/or photos as proof of completion within the terms of the conditions, and/or*
- *long-term maintenance and operation agreements for stormwater best management practices and vegetation that must be protected or restored as a condition of approval, along with notices of restrictions recorded against properties to ensure that future property owners are aware of their responsibilities and don't unknowingly "undo" any conditions.)*

conditions continued
