

Chapter 16 - Development Standards

Section 1600: Development Standards

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1600.01 ADMINISTRATION OF CODE.

Notwithstanding anything in this chapter to the contrary, the provisions of Minnesota Statutes, Section 15.99 as it may be amended from time to time, and the following sections shall govern the process for making decisions under this chapter. To the extent to which these sections conflict with the provisions of Minnesota Statutes, Section 15.99, as it may be amended from time to time, the provisions of that statute shall apply.

Any landowner may request a determination by the City Council that a use not included in the Zoning Ordinance is substantially similar to a use classified as permitted, conditional or accessory. An application for such a determination shall be filed with the Zoning Administrator who shall refer it to the Planning Commission. The Planning Commission shall consider the application and shall file its recommendations with the City Council. If the City Council determines that the use is substantially similar to a use included in these regulations, such use shall thereafter be permitted whenever the similar listed use is authorized.

Subd. 1. ZONING ADMINISTRATOR.

The office of Zoning Administrator is hereby established. The duties of this office shall rest with the City Clerk-Administrator, except that he or she may assign all or a portion of these duties to City staff or consultants, or to an appointed position or positions, at the direction of the City Council. The duties of the office shall include the following:

1. Periodically inspect buildings, structures, and uses of land to determine compliance with the terms of the Zoning Ordinance;
2. Notify, in writing, any person responsible for violating a provision of the Zoning Ordinance, indicating the nature of the violation and ordering the action necessary to correct it;

3. Order discontinuance of illegal use of land, buildings or structures; order removal of illegal buildings, structures, additions, alterations; order discontinuance of illegal work being done; or take any other action authorized by this Chapter or the Zoning Ordinance to ensure compliance with or to prevent violation of its provisions, including cooperation with the City Attorney in the prosecution of complaints;
4. Maintain permanent and current records of the Zoning Ordinance, including all maps, amendments, conditional uses, and variances;
5. Maintain a current file of all permits, all certificates, and all copies of notices of violation, discontinuance, or removal for such time as necessary to ensure a continuous compliance with the provisions of this Chapter and the Zoning Ordinance and, on request, provide information to any person having a proprietary or tenancy interest in any specific property;
6. Provide clerical and technical assistance to the Planning Commission and Board of Appeals and Adjustments;
7. Submit each month to the Planning Commission an itemized summary of certificates and permits granted and other significant activity of the preceding month;
8. Receive, file and forward to the board of appeals and adjustments or Planning Commission all applications for conditional use permits, variances or amendments.

Subd. 2. ADMINISTRATIVE FEES.

1. **Permit Charges.** No person shall be issued a permit pursuant to this Chapter or the Zoning Ordinance until the applicant has paid to the Administrator the fixed and additional costs incurred by the City in reviewing the application as provided for in this Chapter or the Zoning Ordinance.
2. **Fixed Administrative Costs.** Each applicant shall be charged the fixed fee specifically provided in this Chapter or the Zoning Ordinance or in duly enacted resolutions of this City as required to cover the costs incurred by the City in administratively processing, reviewing and issuing, if granted, each permit.
3. **Variable Additional Costs.** Each applicant shall be charged an amount equal to the additional costs incurred by the City in processing and reviewing each application for a permit including, but not limited to, engineering, legal and planning consultant costs when authorized by the City Council.
4. **Initial Payment.** At the time of making application for a permit, each applicant shall pay the fixed fee as described above in paragraph 2 plus a deposit for the costs described above in paragraph 3, which shall equal the City Clerk-Administrator's estimate of the additional costs the City will incur in processing and reviewing the applicant's particular permit application if such an estimate can be made.

5. **Payment of Costs.** If no estimate of costs can be made by the administrator, the applicant shall receive a monthly statement of costs incurred by the City, which shall be payable fifteen (15) days after receipt by the applicant. Failure to pay such costs shall result in a suspension of action on the application. If a payment of estimated costs has been made, such payment shall be a credit against such statements until the sum is exhausted in which event the excess shall be due upon receipt of the statement. Any unused portion of the deposit shall be refunded upon final action on the application. No permits shall be issued until an applicant shall make payment in full of costs billed to the applicant.
6. **Unpaid Costs.** The City Council shall certify all unpaid costs described above in paragraph 5 to the County Auditor who shall enter them upon the tax records as a lien upon such land to be collected in the same manner as other real estate taxes are collected.
7. **Establishment of Fees.** An administrative fee schedule for planning and zoning applications shall be established by City Council resolution at the first City Council meeting of each year.

Subd. 3. SEVERABILITY.

If any court of competent jurisdiction adjudges any provisions of this Code to be invalid, such judgment will not affect the validity and continued enforcement of any other provisions of this Code. If any court of competent jurisdiction adjudges the application of any provisions of this Code to any property, structure, or use to be invalid, such judgment will not affect the application of that provision to any other property, structure, use not specifically included in that judgment.

Subd. 4. INCONSISTENT PROVISIONS.

If the text of this Ordinance or the Zoning Ordinance conflicts with an exhibit on the chart, the text will supersede the exhibit or chart, but if the text is omitted but listed on the chart, the chart will supersede.

Subd. 5. ENFORCEMENT.

This Code is administered and enforced by the Zoning Administrator who is the designated enforcing agent. In carrying out this general authority, the Zoning Administrator shall:

1. Cause inspections of buildings and the use of land to determine compliance with the terms of this Code.
2. Maintain permanent and current records pertaining to this Ordinance and the Zoning Ordinance, including, but not limited to maps, amendments, conditional uses, variances, appeals, and applications thereof.
3. Receive, file, and forward applications for rezoning, variances, conditional use permits, or other action to the appropriate official bodies.

4. Provide clerical and technical assistance to the Planning Commission and the City Council.
5. Make recommendations to the City Council on the institution of appropriate actions or proceedings for enforcement of this Chapter and the Zoning Ordinance on amendments, and on any other matters relating to the administration of this Chapter and the Zoning Ordinance.
6. The City shall require that any application for a building permit, and the accompanying site plan for all construction, contain all of the information necessary to enable them to determine whether the proposed structure complies with the provisions of this Chapter and the Zoning Ordinance. No building permit shall be issued for the construction, structural alteration, or moving of a structure until the City has verified that the proposed building other alteration complies with all the provisions of this Ordinance and the Zoning Ordinance and other applicable regulations.
7. The Police Department, as the enforcing agency of this Ordinance and Zoning Ordinance, shall have all the powers, duties, and responsibilities, necessary to enforce the provisions of this Chapter and the Zoning Ordinance and to issue such directives as may be necessary to carry the intent thereof.
8. After conviction becomes final, the continued violation of such provision constitutes a separate offense for each day such violation continues, with the exception of Subdivision regulations. Anyone violating any of the Subdivision regulations of this Code is guilty of a misdemeanor, and each month such violation continues constitutes a separate offense.

Subd. 6. VIOLATIONS AND PENALTIES.

1. Violations.

A failure to comply with any of the requirements of this Ordinance and the Zoning Ordinance, including violations of conditions and safeguards established in connection with the granting of variances, conditional use permits, subdivisions, and planned unit development plan approvals shall constitute a violation of this Ordinance and the Zoning Ordinance. Any violation of the terms and provisions of this Chapter or the Zoning Ordinance shall constitute a misdemeanor.

2. Legal Proceedings.

The Zoning Administrator, the Planning Commission, the Board of Zoning Appeals or any designated enforcement official may bring to the attention of the Planning Commission, City Council, or City Attorney a violation of the provisions of this Ordinance or the Zoning Ordinance in order to initiate legal proceedings pursuant to law.

3. Mandatory Injunction.

In the event of a violation, or threatened violation of this Chapter or the Zoning Ordinance, the City Council and/or Administrative Officer, in addition to other

remedies may institute appropriate action or proceedings to prevent, restrain, correct, or abate such violations or threatened violations and it shall be the duty of the City Attorney to institute such action. This will include, but not be limited to mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction.

The Zoning Administrator, the Planning Commission, the Board of Zoning Appeals or any designated enforcement official may request the Planning Commission, City Council, or City Attorney to bring an action for a mandatory injunction directing any person to remove a structure and/or discontinue working in violation of the provisions of this Ordinance or the Zoning Ordinance pursuant to law.

4. Common Nuisance.

Any structure erected, raised, or converted, or land or premises used in violation of any provision of this Ordinance or the Zoning Ordinance or the requirements thereof, is hereby declared to be a common nuisance and as such, may be abated in such a manner as nuisances are now or may hereafter be abated under existing law.

5. Fines.

Any violation of this Ordinance or the Zoning Ordinance is a misdemeanor. For the purposes of this Ordinance and the Zoning Ordinance, each twenty-four hour day that a violation continues shall constitute a separate offense.

6. Person in Violation.

Any person, who attempts, commits, participates in, assists or maintains a violation of this Ordinance or the Zoning Ordinance may be found guilty as a principal and suffer the penalties herein provided.

7. Remedy for Failure.

The remedy provided in this Section for failure to comply with any of the requirements of this Ordinance or the Zoning Ordinance, whether civil, criminal, or otherwise, shall be cumulative and shall be in addition to any other remedy provided by law.

1600.02. TRANSITION RULES.

In determining the applicability of this Code, with respect to the previous applicable regulations, the following rules apply.

A. Existing Unlawful Uses and Structures.

A structure or use not lawfully existing at the time of adoption of this Code must be deemed lawful as of the effective date of this Code if it conforms to all requirements of this Code. If such structure or use does not conform to all the requirements of this Code, then the structure or use must remain unlawful.

B. Existing Permitted Uses

When a lot is used for a purpose that was classified as a permitted use prior to the effective date of this Code, and such use is classified as a conditional use by this Code that use is hereby deemed a lawful conditional use for the purpose of this Code. Any addition, enlargement or expansion of such use must conform to the requirements for conditional uses within this Code.

C. Uses Rendered Nonconforming

When a lot is used for a purpose that was a lawful use before the effective date of this Code, and this Code, or any amendment thereto, no longer classifies the use as either a permitted or conditional use in the zoning district in which it is located, that use is deemed a legal nonconforming use and is controlled by the provisions of subsection 1600.11 “Nonconformities” below.

D. Structures and Lots Rendered Nonconforming

Where any lawful structure or lot existing on the effective date of this Code does not meet all standards set forth in this Code, or any amendment thereto, that structure or lot is deemed nonconforming and is controlled by the provisions of subsection 1600.11 “Nonconformities” below.

E. Previously Issued Building Permits

Where construction has lawfully begun prior to the effective date of this Code, or subsequent amendment thereto, such construction is permitted, provided:

1. A complete building or signed permit application is received that contains all requested and required information, prior to City Council action adopting or amending this Code.
2. Actual construction is begun within thirty (30) days after City Council action to adopt or amend this Code and is diligently prosecuted to completion. Actual building construction means the placing of construction materials in a permanent position and fastened in a permanent manner, and does not include the demolition or removal of an existing building.

There is no entitlement under this paragraph E to continue construction that is inconsistent with this Ordinance or the Zoning Ordinance or the Subdivision Ordinance, or any amendment, on the basis of any permit issued during consideration of adoption or amendment of such ordinances when the applicant is authorized to make improvements at the applicant’s risk and the applicant elects to commence construction.

1600.03. BUILDING PERMITS.

Subd. 1. BUILDING PERMITS REQUIRED.

- A. No person or corporation may erect, construct, enlarge, repair, move, improve, convert, or demolish any structure in the City, or cause the same to be done, without first obtaining a separate building permit for each such structure from the Building Official.
- B. No building permit or other permit or certificate pertaining to the use of land or buildings shall be issued unless such building is designed and arranged to conform to the provisions of this Chapter and the Zoning Ordinance.

Subd. 2. SITE PLAN REQUIRED.

Every application for building permit shall be accompanied by a site plan, in duplicate, drawn to scale showing actual dimensions of the following, if applicable:

- A. the lot or lots to be built upon;
- B. the location and size of the structures;
- C. improvement or use to be erected, altered or placed on the lot;
- D. location of required parking and loading areas;
- E. size of yards and open spaces;
- F. existing and proposed streets and alleys adjoining or within the lot;
- G. such other information as may be necessary to provide for the enforcement of this Chapter; and
- H. in the case of flood land areas, elevations and locations of the following must be shown: lot, existing or proposed structures, fill, and storage of material and stream channel.

Subd. 3. OCCUPANCY CERTIFICATE REQUIRED.

No land shall be occupied or used and no building erected, reconstructed or structurally altered after the adoption of this Code shall be occupied or used, in whole or in part, for any purpose whatsoever, until a certificate of occupancy has been issued by the Building Official stating that the building and the use appears to comply with all of the provisions of this Chapter or the Zoning Ordinance applicable to the building or premises of the use in the district in which it is located.

Subd. 4. CHANGE IN USE.

No change in use shall be made in any building or part thereof, now existing or hereafter erected, reconstructed or structurally altered, without a certificate of occupancy having been issued by the Zoning Administrator, and no such permit shall be issued to make such a change unless it is in conformity with the provisions of this Chapter or the Zoning Ordinance. Application for a certificate of occupancy shall be made with the application for a building permit and shall be issued within ten (10) days after the lawful erection, reconstruction or structural alteration is completed.

Subd. 6. EXPIRATION OF PERMITS.

- A. **Work not Begun or Abandoned.** Every permit issued under this Chapter or the Zoning Ordinance shall expire by limitation and become null and void if the work authorized thereby is not commenced within one hundred twenty (120) days from the date of issue of such permit, or if the work authorized thereby is suspended or abandoned at any time after work has been commenced for a period of one hundred twenty (120) days.
- B. **New Construction.** In the case of a permit issued under this Chapter or the Zoning Ordinance for new construction of a one- or two-family dwelling, such permit shall expire and become null and void if the dwelling is not completed by the end of two (2) years from the date of issuance of the permit.
- C. **Alterations.** In the case of a permit issued under this Chapter or the Zoning Ordinance for the construction of additions, alterations or improvements to an existing one- or two-family dwelling, or accessory structures thereto, such permit shall expire and become null and void if the dwelling is not completed by the end of one (1) year from the date of issuance of the permit.
- D. **Extensions.** The time limits set forth in Subdivisions 1 through 3 may be extended with the approval of the Planning Commission provided that a written application for such extension, with stated reasons for the extension, is submitted to the Zoning Administrator at least two (2) weeks prior to the regularly scheduled Planning Commission meeting prior to the date the permit would otherwise expire.

Subd. 7. COMPLETION OF WORK.

The terms completed or completion of work shall mean:

- A. Completion of all visible exterior construction with approved finished materials in accordance with a posted list available at City Hall.
- B. Painting, staining, or other exterior finishing.

- C. Finishing of driveways and walks as proposed in building plans.
- D. Removal of construction materials, equipment, debris, and excess earth from the building and property.
- E. Placement of top soil and finish grading.
- F. Finish grading of any swales within established drainage easements necessary to accommodate natural drainage of adjacent properties.

1600.04. APPLICATION PROCESS, GENERALLY

Subd. 1. SUBMITTING AN APPLICATION

Notwithstanding anything to the contrary in this Chapter, all applications for any site plan, conditional use permit, variance, or for any other city approval required by this Chapter or the Zoning Ordinance, or to amend this Chapter or the Zoning Ordinance, shall be made in writing to the Zoning Administrator or other person appointed by the City Council to administer this Chapter or the Zoning Ordinance. The Zoning Administrator is authorized to reject in writing any incomplete application within fifteen (15) business days of the receipt if the application is incomplete, stating the reasons for its rejection, including what information is missing. This rejection shall be sent by first-class mail to the applicant. Every application shall contain the legal description of the property and a statement of the specific permit or action being sought. Nothing in this section shall be deemed to prevent the city from requesting additional information from the applicant upon which to base a decision.

The purpose of this Section is to outline the general application, notice, public hearing procedures for the Zoning applications and approvals found within this Code.

- A. **Filing.** An application for any application or approval may be filed by those persons, councils, boards, commissions, and officials indicated in this Section or other sections of this Code for each application or approval.
 - 1. All applications are to be filed with the Zoning Administrator.
 - 2. The application will be filed in such number as the instructions provide.
 - 3. All applications must include the following information (additional information may be requested by the City). Also see specific sections for details.
 - a. Site address, legal description, lot, block, and parcel ID;
 - b. The name, address and contact information of the property owner;
 - c. The present zone classification of the property;

- d. A description of the proposed use of the property;
 - e. A map or plot showing the property and all the properties within 500 feet of the boundaries; and
 - f. A list of names and addresses of all property owners within five hundred fifty (500) feet of the parcel included in the request, plus the required fee, as set forth in the City's fee schedule, as amended from time to time.
- B. **Completeness.** The Zoning Administrator will determine whether the application is complete. If the application is not complete, the Zoning Administrator will notify the applicant of any deficiencies, and take no steps to process the application until the deficiencies are remedied. Once the Zoning Administrator determines that the application is complete, the application will be scheduled for consideration by the Planning Commission and a public hearing, where applicable.
- C. **Fees.** Every application must be accompanied by the required filing fee as established and modified from time to time, by the City Council. The failure to pay such fee when due is ground for refusal to process the application, and for denying or revoking any permit or approval for the subject property.
- D. **Withdrawal of Application.** An applicant has the right to withdraw an application at any time prior to the decision on the application by a City Official, commission or board. Such withdrawal must be done in writing.
- E. **Successful Applications.** Within one year of the date of denial, a subsequent application cannot be reviewed or heard unless there is substantial new evidence available, or if a significant mistake of law or of fact affected the prior denial. Such subsequent application must include a detailed statement of the grounds justifying its consideration. The Zoning Administrator will make a determination as to whether the subsequent application is making essentially the same request. If the Zoning Administrator finds that there are no grounds for consideration of the subsequent application, the Zoning Administrator will summarily, and without hearing, denies the request.
- F. **Timeline.** All application procedures must follow the timelines required by the Minnesota Statutes, Section 15.99 (Timeline for Agency Action), if applicable.

Subd. 2. REFERRAL TO PLANNING COMMISSION.

Any proposed zoning amendment shall be submitted to the Planning Commission who will hold whatever public hearings it deems advisable in the manner provided in this Ordinance. The Planning Commission must then transmit to the City Council its conclusions and recommendations concerning the proposed amendment.

Subd. 3. GIVING PUBLIC NOTICE.

1. **Time Frame.** Unless otherwise specified, all notice timeframes are measured in calendar days.

i. All determinations for rezoning, conditional uses, variances requests shall have sixty days from the date a complete application is received. Extensions by the Planning Commission or City Council may be sought but notice shall be provided to the applicant with reasons for the extension. and anticipated determination date. All subdivision requests, including preliminary and final plats, shall have one hundred twenty (120) days from the date a complete application is received for preliminary plat approval and sixty (60) days for final plat approval.

2. **Required Notice.** The table below indicates which type of notice is applicable for each type of land use application and approval.

PUBLIC NOTICE TABLE:

APPLICATION AND APPROVAL NOTICE					
APPLICATION	PUBLISHED NOTICE		MAILED NOTICE		POSTED NOTICE
	Planning Commission/Zoning Board of Appeals	City Council	Planning Commission/Zoning Board of Appeals	City Council	
Text Amendment	X	X			
Rezoning	X	X	X	X	X
Administrative Variance	X		X		X
Major Variance	X		X		X
Appeals of Zoning Administrator Determination	X				

Appeals to Zoning Board of Appeals Determination		X			
Preliminary Plat	X	X			X
Final Plat	X	X			X

A. **Mailed Notice.** For applications that require a mailed notice in accord with the above Table:

- i. Written notice for public hearings will be mailed to the owners of all properties located within three hundred fifty (350) feet from the property line of the subject property at least ten (10) days prior to the public hearing or the nearest twenty (20) property owners, whichever will provide notice to the greatest number of owners. The three hundred fifty (350) feet is measured in all directions from the perimeter of the subject property.
- ii. Copies of all notices to consider a text amendment or variance to the regulations, a rezoning of land, or for a conditional use permit in a Flood Plain District must be sent to the FEMA, and postmarked at least ten (10) days before the public hearing. A copy of any approved amendment, rezoning, variance or conditional use permit must be sent to FEMA and postmarked within ten days of final action.
- iii. For minor variances or minor conditional use permits that do not require a public hearing, notification must be given at least ten days prior to the date of the Zoning Administrator’s decision to the owners(s) of all properties adjacent to the subject property, as well as property located directly across the street.
- iv. The giving of such notice pursuant to this section does not prevent the applicant from giving such additional notice as he/she may deem appropriate.
- v. For the purposes of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners, including the local Tax Assessment Records. A copy of the notice and a list of the owners and addresses to which the notice was sent must be attested to by the responsible person.

- vi. The body conducting the hearing will hear no application unless the applicant complies in all respects with the requirements herein. The failure to give mailed notice to individual property owners, or defects in the notice, does not invalidate the proceedings, provided a bona fide attempt to comply with this requirement has been made.
- B. **Posted Notice.** A public notice sign will be posted for applications for zoning map amendments, any conditional use permits, administrative and major variances, and other actions for which a public hearing is required. The following standards are required for the placements of public notice signs:
- i. The City will provide public notice sign(s) to the applicant for posting on the subject property. The sign(s) must be picked up from the City on the Friday prior to the posting date before 4:00 PM.
 - ii. Sign(s) must be in place at least ten (10) days prior to the date of the public hearing and must be removed by the applicant within forty-eight (48) hours after the public hearing.
 - iii. The intent of the public notice sign is to notify the public of the proposed action. Therefore, the sign must be located and installed so it will be readily visible and not obscured from public view due to blockage by vegetation, fencing or other structures.
 - iv. Failure to post may result in a delay of permit processing and postponement of public hearing.
 - v. Public notice signs are exempt from the requirements of the Sign Ordinance of this Code.
- C. **Convening and Location.** Public hearings regarding zoning matters may be held within the corporate limits of the City by order of the City Council, Planning Commission or board of appeals and adjustments whenever said bodies deem such hearings necessary or when required by this Chapter or the Zoning Ordinance. Public hearings for amendments to the zoning ordinance or for conditional use permits shall be held in the manner provided in Minnesota Statutes, Section 462.357, subdivision 3.
- D. **Notice Requirement.** Notice of a public hearing shall be given by publication at least once in the official newspaper of the City, not less than ten (10) days and not more than thirty (30) days prior to the hearing, stating the time, place and purpose of the hearing together with a description of property affected. Not less than ten (10) days nor more than thirty (30) days prior to the hearing a copy of the notice shall be mailed by the City Clerk or Zoning Administrator to the owner or owners of the property affected and to the owner or owners of property within five hundred (500) feet of the property affected.

- E. **Mailings.** For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. Proof of mailing of notice shall be made by affidavit of the person mailing same and shall be made a part of the proceedings.
- F. **Impact of Improper Notice.** The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.

Subd. 4. PUBLIC EXAMINATION.

During normal business hours, any person may examine the application and material submitted in support of, or in opposition to, the application, subject to the exceptions set forth in the Minnesota Data Practices Act. Upon reasonable request, any person is entitled to copies of the application and related documents. The City will make copies of such materials available for a fee as specified by the City.

Subd. 5. PUBLIC HEARING.

All public hearings will be conducted in accordance with the rules and procedures of the body conducting the hearing. After the public hearing the Planning Commission will make a recommendation to the City Council to approve, not approve, or approve with conditions.

Subd. 6. CITY COUNCIL.

Upon receipt of the recommendation of the Planning Commission the City Council shall consider the proposed amendment. In considering the proposed amendment, due allowance shall be made for existing conditions, for the conservation of property values, for the direction of building development to the best advantage of the entire City, and for the uses to which the property affected is being devoted at the time. No change to the Zoning Ordinance shall be recommended unless it is required of the public good, is in the interest of the public health, safety, and welfare, and is compatible with the Comprehensive Plan of the City and any applicable requirements of this Chapter. The Council may approve, not approve or approve with conditions.

Subd. 7. APPROVAL.

1. A conditional use permit approved by the Council shall be established within one (1) year following the Council's determination, unless an extension of time has been granted by the City Council, as recommended by the Planning Commission. Such extension must be requested in writing and filed with the City Clerk at least thirty (30) days before the expiration of the original conditional use permit. The request for extension shall state facts showing a good-faith attempt to complete the work permitted in the conditional use permit.
2. A certified copy of any approved conditional use permit shall be filed with the County Recorder by the owner. The Conditional Use Permit shall include the legal description of the property involved. The owner shall provide the

governing body with receipt verifying said Conditional Use Permit was properly filed and recorded within thirty (30) days from mailing the city's determination.

Subd. 8. DENIAL.

The proposed amendment may be denied by motion of the City Council and such motion shall constitute a finding and determination by the City Council that the conditions required for approval do not exist.

1600.05. REZONING & TEXT AMENDMENTS

- A. Proceedings for amendment that are initiated by the petition of the owner or owners of the property and are consistent with the goals of the Comprehensive Plan shall be filed with the Zoning Administrator.
- B. Initiation. The City Council, Planning Commission, or owner of property within the City may propose a text amendment or rezoning.

Subd. 1. APPLICATION REQUIREMENTS.

Applications shall additionally include the following information:

- 1. The present zone classification of the area and the proposed zone classification;
- 2. A description of the present use of each separately owned tract within the area, and the intended use of any tract of land therein;
- 3. A site plan showing the location and extent of the proposed building, parking, loading, access drives, landscaping and any other improvements;
- 4. A statement of how the rezoning would fit in with the general zoning pattern of the neighborhood, and the zoning plan of the entire City;
- 5. A map showing the property to be rezoned, and the present zoning of the surrounding area for at least a distance of three hundred fifty (350) feet, including the street pattern of such area, together with the names and addresses of the owners of the lands in each area.

Subd. 2. FINDINGS OF FACT.

The Planning Commission, in making recommendation, and the City Council, in granting approval or denial, must consider the following standards:

- 1. Consistency with the Comprehensive Plan;
- 2. Conservation of property values and rights, and whether the amendment will have an adverse effect on adjacent properties;
- 3. Effect of the change upon existing uses of property and the zoning district(s).

Subd. 3. RETENTION OF ZONING POWER.

No amendment adopted to rezone property, upon petition of its owner(s), prohibits the City Council from subsequently rezoning the same property.

1600.06. INTERIM USES.

Subd. 1. AUTHORIZATION.

The City Council may authorize an interim use of property, by means of an Interim Use Permit, which shall be processed in the same manner as a Conditional Use Permit as established in Subsection 1600.07.

Subd. 2. CONSISTENT USE.

Interim uses may or may not be consistent with the land uses designated on the adopted Land Use Plan, and may also fail to meet all of the zoning standards established for the zoning district within which it is located.

Subd. 3. TERMINATION.

In reviewing the Interim Use Permit application, the City will establish a specific date or event that will terminate the use on the property, but in no case more than three (3) years from the date of approval of the interim use, after which the applicant shall have the right to use the property only in a manner consistent with the land use designations and policies of the City Comprehensive Plan and Zoning Ordinance.

Subd. 4. CONDITIONS.

The City Council may attach additional conditions to an Interim Use Permit to insure that it will not have adverse effects on the public health, safety, and welfare, and that it will not impose additional costs on the public if it is necessary for the public to take the property in the future. Such conditions will be reviewed annually within the period of the Interim Use Permit, and the City Council may order the inspection and revocation of the permit as provided for in this Chapter.

1600.07. CONDITIONAL USES.

Subd. 1. GENERALLY.

The City Council may grant Conditional Use Permits when such permits are authorized by the Zoning Ordinance and may impose conditions and safeguards in such permits to protect the health, safety and welfare of the community and assure harmony with the comprehensive plan of the City.

Subd. 2. CRITERIA.

In acting upon an application for a Conditional Use Permit, the City shall consider the effect of the proposed use upon the health, safety, and general welfare of the City

including but not limited to the factors of noise, glare, odor, electrical interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions; parking facilities on adjacent streets and land; the effect on surrounding properties, including valuation, aesthetics and scenic views, land uses, character and integrity of the neighborhood; consistency with the Comprehensive Plan; impact on governmental facilities and services, including roads, sanitary sewer, water and police and fire; effect on sensitive environmental features including lakes, surface and underground water supply and quality, wetlands, slopes, flood plains and soils; and other factors as found relevant by the City. The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City or other governmental bodies having jurisdiction over the City. In permitting a new conditional use or the alteration of an existing conditional use, the City may impose, in addition to the standards and requirements expressly specified by this Chapter, additional conditions that it considers necessary to protect the best interest of the surrounding area or the community as a whole.

Subd. 3. INITIATION.

Any owner of any property in the City may request a Conditional Use Permit.

Subd. 4. APPLICATIONS.

Applications for a Conditional Use Permit may be completed on a form as provided by the City, together with supplemental information as required below. All requests must comply with the provisions in Subdivision 2 above and be accompanied with an administrative fee as set by Council resolution. Additionally, applications shall include the following information:

1. A description of the proposed use;
2. A site plan showing the location and extent of the proposed building, parking, loading, access drives, landscaping and any other improvements;
3. A map or plot showing the property and all property within five hundred (500) feet of the boundaries of the property;
4. The names and addresses of the owners of record of all property within five hundred (500) feet of the boundaries of the property;
5. Any other information required by the Zoning Administrator, Planning Commission or City Council;
6. Applications shall be accompanied with a Site Plan, showing such information as necessary to show compliance with this Ordinance and the Zoning Ordinance, including but not limited to:
 - a. Description of site (full legal description)
 - b. Site Plan drawn to scale showing parcel and building dimensions

- c. Location of all easements
- d. Curb cuts, driveways, access roads, parking spaces, off-street loading areas and sidewalks
- e. Landscaping and screening plans
- f. Drainage Plan
- g. Sanitary sewer and water plan with estimated use per day
- h. Soil Type
- i. Any additional written or graphical data reasonably required by the Zoning Administrator or the Planning Commission.

Subd. 5. PLANNING COMMISSION ACTION.

No Conditional Use shall be recommended by the Planning Commission unless the Commission shall find:

1. That the Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
2. That the establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property or predominant uses in the area.
3. Those adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided.
4. Those adequate measures have been or will be taken to provide sufficient off-street parking and loading space to serve the proposed use.
5. That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.
6. Those proper facilities are provided that would eliminate any traffic congestion or traffic hazard that may result from the proposed use.
7. The demonstrated need for the proposed use.
8. The proposed use is in compliance with the Comprehensive Land Use Plan adopted by the City.
9. That the use does not have an undue adverse impact on governmental facilities, utilities, services, or existing or proposed improvements.

10. Those proper facilities are provided that would eliminate any traffic congestion or traffic hazard which may result from the proposed use.
 - a. That the proposed use shall provide buffering or screening as required by the City.
 - b. The demonstrated need for the proposed use.

Subd. 6. RECORDING.

A certified copy of any Conditional Use Permit shall be filed with the County Recorder by the property owner. The permit shall include a copy of the resolution authorizing the permit and subsequent conditions, the legal description and parcel I.D. of the property included. A recorded, certified copy must be provided to the City within thirty (30) days.

Subd. 7. LAPSE DUE TO NON-USE.

Whenever one (1) year after granting a Conditional Use Permit, the work permitted by the permit shall not have been completed, then such permit shall become null and void unless a petition for an extension of time for a period not to exceed and additional one (1) year term, in which to complete the work that has been granted by the City Council. Such extension must be requested in writing and filed with the City Clerk at least thirty (30) days before the expiration of the original Conditional Use Permit. There shall be no charge for filing such petition. The request for extension shall state facts showing good-faith attempt to complete the work permitted in the conditional use permitted in the Conditional Use Permit. Such petition shall be presented to the Planning Commission for recommendation and to the City Council for a decision. Further, whenever a conditional use has not been in operation for a period of twelve months, the conditional use shall be considered null and void.

Subd. 8. CONDITIONAL USE COMPLIANCE.

Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity to the terms of such permits and of any conditions designated in connection therewith. The effectiveness of Conditional Use Permit may be reviewed at any time but at least annually by the City Council.

Subd. 9. INSPECTION AND REVOCATION.

The City may at any time inspect the conditionally permitted use to determine if the applicant is strictly adhering to the Conditional Use Permit and the conditions thereof. If it is found that the permit and the conditions of the permit are not being adhered to, the applicant shall be notified in writing by the City and given ten (10) days to come into strict compliance. If compliance is not achieved after that ten day period, the City Council shall hold a public hearing to consider the matter and may revoke the Conditional Use Permit.

Subd. 10. CONDITIONAL USE PERMITS WITHIN FLOODPLAIN DISTRICTS.

A copy of all decisions granting Conditional Use Permits in Flood Plain Districts shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

1600.08. VARIANCES.

Subd. 1. GENERALLY.

The City Council may grant variances from the strict application of the provisions of the Zoning Ordinance and impose conditions and safeguards to the variance so granted, but no variance shall be granted unless the City Council finds that the conditions of Minnesota Statutes, Section 462.357, Subd. 6 are met.

Subd. 2. PROHIBITED USES.

No variance shall be granted to allow any use that is not permitted under this Chapter for property in the zone where the applicant's land is located.

Subd. 3. APPLICATIONS.

Applications for a variance may be completed on a form as provided by the City, together with supplemental information as required below. All requests must comply with the provisions in Subdivision 1 above and be accompanied with an administrative fee set by Council resolution. Additionally, applications shall include the following information:

1. A description of the proposed use and how it varies from the applicable provisions of the Zoning Ordinance;
2. A legal description of the property, including plot and parcel number;
3. A map or plat showing the property and all property within five hundred (500) feet of the boundaries of the property;
4. A site plan showing the location and extent of the proposed building, parking, loading, access drives, landscaping and any other improvements;
5. The names and addresses of the owners of record of all property within five hundred (500) feet of the boundaries of the property;
6. A statement of the applicant, referring to specific facts, describing the following:
 - a. The exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone classification;
 - b. The practical difficulties to the applicant if the variance is not granted;

- c. That the granting of such application will not, under the circumstances of the particular case, materially adversely affect the health or safety of persons residing or working in the neighborhood of the property of the applicant, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood;
- d. Any other information required by the Zoning Administrator, Planning Commission or Council.

Subd. 4. AUTHORITY.

1. Findings of Fact

No variance from the provisions of the Zoning Ordinance will be granted unless the Zoning Board of Appeals makes specific findings of fact based directly on the standards and conditions imposed in this subsection. These standards are as follows:

- a. Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, practical difficulties to the owner would result if the strict letter of the law were carried out.
- b. There are exceptional circumstances or conditions that are unique and applicable to the property or building that do not apply generally to other properties or buildings in the same zone or neighborhood and that were not created by the property owner.
- c. The granting of the variance is a reasonable request and will not be materially detrimental to public health, safety, or welfare, or injurious to the property or improvements in the zone or neighborhood in which the property is located.
- d. The proposed variance will not be contrary to the essential character of the neighborhood, or the intent of this Code or the Comprehensive Plan.
- e. When considering a variance for shoreland properties, excluding those within a floodway, where development exists on both sides of the proposed building site, water and road setback may be varied to conform to the existing established setbacks.
- f. When considering a variance for shoreland properties, the Zoning Board of Appeals must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.

- g. The following additional variance criteria of the Federal Emergency Management Agency (FEMA) must also be satisfied:
- 1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;
 - 2) A determination that the failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3) A determination that the granting of a variance will not result in increased flood height, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

Subd. 5. TERM OF VARIANCE.

The structure authorized by a variance must be established within one (1) year, unless an extension of time has been granted by the City Council, or the variance will lapse.

Subd 6. RECORDING OF VARIANCE.

A certified copy of all variances granted shall be filed with the Benton County Recorder by the property owner. The filing shall include a copy of the resolution authorizing the variance and the legal description and parcel I.D. of the applicable property or properties. A recorded, certified copy must be provided to the City within thirty (30) days.

1600.09. ABANDONMENT OF CONDITIONAL USE OR VARIANCE.

Subd. 1. ABANDONMENT.

Whenever within one (1) year after the granting of a conditional use permit or a variance the owner or occupant shall not have substantially completed the erection or alteration of a building or structure described, then the permit or variance shall become null and void unless a petition for extension of time in which to complete the proposed construction of alterations has been granted.

Subd. 2. EXTENSION OF TIME.

A petition to extend time of a conditional use permit or variance shall be in writing and filed with the Zoning Administrator no later than twenty (20) days before the expiration of one (1) year from the date the permit or variance was approved. It shall state facts showing a good faith attempt to use the permit or variance, and shall state the additional time requested to complete the construction or alteration. Such petition shall be presented to the board of appeals and adjustments for hearing and decision in the same manner as the original request. In determining whether the petitioner has made a good

faith attempt to use the permit or variance, the board may consider such factors as the design, size, expense and type of the proposed construction or alteration.

Subd. 3. TWO-YEAR PERIOD.

It shall be within the power of the Planning Commission or board of appeals and adjustments, at the time of granting the original request for a conditional use permit or variance, to grant a two-year period for the substantial construction of the building or structure, but such two-year period may not thereafter be extended.

1600.10 SUBDIVISION REQUESTS.

The provisions of this subsection must be followed in addition to those specified in the Subdivision Ordinance.

Subd. 1. Pre-application Meeting.

Prior to the submission of any plat for consideration by the Planning Commission, the subdivider shall meet with the City staff to introduce himself/herself as a potential subdivider and learn the relevant requirements of the City's code. The applicants may prepare a sketch plan for discussion purposes prior to preparing a preliminary plat.

Subd. 2. Review for completion.

1. Before any plat submission is considered complete, the Zoning Administrator will, within ten (10) working days, review the plat to determine if it complete and in general compliance with the provisions of this subsection and the Subdivision Ordinance. When a plat application is determined to be incomplete or not in general compliance with provisions in this Code, the Zoning Administrator will notify the applicant within five (5) working days.
2. When a plat is deemed complete, the City Clerk will notify the applicant in writing and schedule the application for next available Planning Commission meeting. The City Clerk shall also forward the application to Commissioner of Transportation for review if the plat includes or borders on a trunk highway or state rail bank property. Within five (5) days after receiving the preliminary plat that includes or borders on an existing or proposed county road or state rail bank property, the Administrative Officer must submit it to the county Engineer for review. The Commissioner of Transportation and the County Engineer must report to the city within thirty (30) days with any comments or recommendations they may have. The Administrative Officer must also submit the plat to the City's Fire Chief and Engineer, who must report to the City within ten (10) days with any comments and recommendations they may have.

Subd. 3. ACTION ON PRELIMINARY PLATS

Once an application for a preliminary plat is determined to be complete, the Planning Commission must recommend approval or denial within sixty (60) days and the Council must act on the application within one hundred twenty (120) days. Failure to approve or deny by the Council within the review period is deemed approval. Upon demand of the applicant, the Zoning Administrator may execute a certificate of approval for the preliminary plat.

Subd. 4. ACTION ON FINAL PLATS

- A. Once an application for a final plat has been determined to be complete, the Planning Commission must recommend approval or denial of the final plat within thirty (30) days and the Council must act on the application within sixty (60) days. A final plat is considered complete when the applicant has complied with all conditions and requirements of preliminary approval either through assuring satisfactory performance or the execution of appropriate agreements assuring satisfactory performance.
- B. After receiving the recommendation from the Planning Commission, the City Council must approve or deny the final plat. Failure to certify approval within sixty (60) days, if the applicant has complied with all conditions and requirements, is deemed approval. Upon demand of the applicant, the City Administrative Officer and the Zoning Administrator may execute a certificate of approval for the final plat.
- C. The owner of the subject property must record the final plat with the County Recorder within one hundred twenty (120) days of final plat approval; otherwise, such approval will become null and void. The City Council may confirm their prior approval without the necessity of the Planning Commission review if a plat is not recorded in one-hundred twenty (120) days and no changes have been made to the original approval.

Subd. 5. SUBDIVISION AGREEMENT.

Upon approval, the subdivider will enter into a Subdivision agreement with the City.

1600.11. NONCONFORMITIES.

Subd. 1. GENERAL STANDARDS OF APPLICABILITY.

- A. **Authority to Continue.** Any use, structure, or lot that existed as a lawful nonconformity at the time of the adoption of this Code, and any use, structure or lot that has been made nonconforming because of the terms of this Code or its subsequent amendments, may continue subject to the provisions of this subsection so long as it remains otherwise lawful. A structure or use that is illegal at the time of the adoption of this Code remains illegal if it does not conform to each and every requirement of this Code.

- B. **Burden on Property Owner to Establish Legality.** In all cases, the burden of establishing the legality of nonconformity under the provisions of this Code is upon the property owner of the nonconforming use, structure or lot.
- C. **Safety Regulations.** The City may permit an expansion to a nonconforming use, in accordance with Subdivision 2 below or impose on nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, and safety. All police power regulations enacted to promote public health, welfare and safety, including but not limited to, all building, fire and health codes, apply to nonconforming structures.
- D. **Nuisances.** Nonconforming structures and/or uses that are determined by the City Council to be public nuisances are not authorized to continue.
- E. **Nonconformity in Floodplain Area.** The City may regulate the repair, replacement, maintenance, improvement or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Floodplain Insurance Program and to avoid in increase in the flood damage potential or increase the degree of obstruction to flood flows in the floodway.
- F. **Ordinary Repairs and Maintenance.** Normal repair, replacement, or improvement may be performed on any structure that is devoted in whole or in part to a nonconforming use, provided it will not create any new nonconformity or increase the bulk or density of the nonconforming use.
- G. **Structural Alterations.** Structural Alterations to a structure containing a nonconforming use are permitted so long as they do not create any new nonconformity or increase the bulk or density of the nonconforming use. In addition, alterations are allowed:
 - i. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
 - ii. When the alteration is for the purpose of bringing the use into conformity.
- H. **Relocation.** A nonconforming structure may not be relocated, in whole or in part, to any other location on the same lot or parcel unless brought into full compliance with this Code.

Subd. 2. PERMIT FOR EXPANSION OF NONCONFORMING USES.

In certain cases, nonconforming uses may be permitted to expand where it can be shown that such action will not be harmful and will be beneficial to the surrounding properties, the neighborhood and the community. An exception, granted by ordinance, may be issued for an existing nonconforming use by the Board of Appeals only where

the applicant demonstrates that the proposed activity will comply with all of the following criteria:

- A. The use occurs entirely within an existing site;
- B. The use is not detrimental or injurious to other uses permitted within the district;
- C. The use is appropriate and consistent with the general welfare of the community and enjoyment of adjacent property;
- D. The off-street parking is adequate to serve the use;
- E. The use is in substantial agreement with the Comprehensive Plan;
- F. Hardship would result if the use were not allowed to expand;
- G. Rezoning the property would result in “spot zoning” or zoning inappropriate to surrounding land uses;
- H. The expansion will be beneficial to surrounding properties, the neighborhood and the community;
- I. The use is one of the following:
 - a. Single-family, multi-family, townhouses, apartments or other residential facilities located in a Nonresidential district;
 - b. Any commercial use in an industrial district;
 - c. General, medical, and dental office uses in residential districts; or
 - d. Any residential use in an industrial district.

Subd. 3. CHANGE OF USE.

A nonconforming use must not be changed to any use, other than one permitted within the zoning district in which it is located. When such a nonconforming use has been changed in whole or in part, to a conforming use, the whole or part that has been made to conform may not be changed back to a nonconforming use. A change of use is deemed to occur when an existing nonconforming use has been terminated and another use has commenced. Any change in use in violation of this Code is deemed an abandonment of the previously existing lawful conforming use.

Subd. 4. DISCONTINUATION OR ABANDONMENT.

If a nonconforming use or occupancy is discontinued for a continuous period of one (1) year, such nonconformity or occupancy is deemed to be abandoned and may not be re-established or resumed regardless of the intent to resume or continue the use. Any subsequent use of such land or structure must conform to all regulations of the zoning district in which such land use or structure is located. The period of such discontinuance caused by government action, acts of God, or other acts without any contributing fault by the user, must not be included in calculating the length of discontinuance for this section.

Subd. 5. DAMAGE OR DESTRUCTION.

- A. If a structure and/or property devoted in whole or in part to a nonconforming use is damaged or destroyed to the extent of fifty percent (50%) or less of the market value at that time, then the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit must be obtained for such rebuilding, restoration, repair or reconstruction within one hundred eighty (180) days of the date of the damage or destruction, and construction must be completed within one (1) year of issuance of the building permit. If a building permit is not obtained within one hundred eighty (180) days, then the nonconforming use cannot be continued.
- B. If a nonconforming structure and/or property devoted in whole or in part to a nonconforming use is damaged or destroyed to the extent of greater than fifty (50%) of its market value at that time and no building permit has been applied for within one-hundred eighty (180) days of when the property is damaged, the nonconformity may not be continued, repaired or replaced. The City may impose reasonable conditions upon a building permit issued under this Subdivision in order to mitigate any newly created impact on adjacent property.

Subd. 6. NONCONFORMING LOTS OF RECORD.

This Subdivision regulates lots of record that at one time were conforming, but that no longer conform to the lot area requirements of the zoning district in which they are located.

- A. If there are two or more lots of record with contiguous frontage in common ownership, and one or more of the lots does not meet the requirements for lot width or lot area as established by this Code, the land so involved is considered a single undivided zoning lot for the purposes of this Code. If such zoning lot is comprised of existing lots of record that each meet ninety percent (90%) or more of the required lot width or lot area of the district in which they are located, such lots of record may be used, transferred or conveyed, so long as the remaining

lots of record within that zoning lot meet ninety percent (90%) or more of the required lot area or lot width.

- B. A use that is permitted within a zoning district is allowed to be erected upon an existing nonconforming lot of record providing the square footage of the lot is 5,000 square feet or greater.

1600.12. APPEAL FROM ADMINISTRATIVE DECISIONS.

Subd. 1. TIME FOR APPEAL.

An appeal may be taken to the board of appeals and adjustments by any person aggrieved by any order, requirement, decision or determination made by the Zoning Administrator or any other administrative office of the City in the enforcement of this Chapter or the Zoning Ordinance. Such an appeal shall be made by written notice to the Zoning Administrator within twenty (20) days of the order, requirement, decision or determination, shall be accompanied by an administrative fee as prescribed by the City fee schedule and shall specifically describe the facts involved and the basis for appeal.

Subd. 2. PROCEEDINGS.

Upon receipt of a notice of appeal, the Zoning Administrator shall transmit the notice to the board of appeals and adjustments, together with all papers constituting a record upon which the action appealed was taken and shall set a time and place for a hearing on the appeal. Such time shall not be less than ten (10) and not more than thirty (30) days after receipt of the notice. Due notice of the hearing shall be given to the parties.

Subd. 3. DECISION AND REVIEW.

Within a reasonable time after the hearing, the board shall make its order deciding the matter and serve a copy of such order upon the applicant by mail. The applicant may, within thirty (30) days, file with the City Clerk an appeal to the Council from the decision of the board.

Subd. 4. BOARD OF APPEALS AND ADJUSTMENTS.

A board of appeals and adjustments is hereby established. The board shall consist of all the members of the Planning Commission and shall have the following powers and duties:

1. To review and hold public hearings on all applications for variances and to make recommendations on said applications to the City Council;
2. To hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator or any other administrative officer of the City in the enforcement of this Chapter or the Zoning Ordinance;

3. To hear and decide appeals by landowners who have been denied building permits due to the location of their land within an area governed by an official map duly adopted and filed by the City.