



Chair
Council Member Art Huebner
Larry Murphy
Quade Mayer
Brad Carlson

**City of Menahga
Planning and Zoning Commission Meeting
5:00 pm Tuesday, March 18, 2021**

City Council Chambers
115 2nd Street NE
www.cityofmenahga.com

Agenda

- A. Call to Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Discussion of Former School Bus Garage – Bruce Melan**
- E. Approval of Minutes of January 26, 2021**
- F. Zoning Administrator Update**
 - a. Wild Walleye Updates**
 - b. Abatement at 613 2nd St. SE**
 - c. Private Paving of City Streets**
- G. Comprehensive Plan Updates – List of Final Content Needed**
- H. Adjournment**

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Planning Commission Meeting

Thu, Mar 18, 2021 5:00 PM - 6:30 PM (CDT)

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City of Menahga
"The Gateway to the Pines"



115 2nd Street NE
PO Box C
Menahga, MN 56464
218-564-4557
www.cityofmenahga.com

March 4, 2021

Mr. Darin Markkula
613 2nd St SE
Menahga, MN 56464

Dear Mr. Markkula,

The City of Menahga has received complaints you are in violation of the City's Nuisance Ordinance which, according to definition, permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public. The complaints are regarding the vehicles and assorted junk on your property. The following, according to Ordinance, are declared to be nuisances:

Chapter 92.16, Subd E, and 92.18, Public Nuisance Subd M: Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or unlicensed vehicles or other materials in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from the accumulation.

The City Council plans to implement the abatement process for this nuisance under **Chapter 92.20 (A) Notice and (B) Procedure**. The nuisance situation on your property located at 613 2nd St SE be presented to the City Council at the regular meeting on March 8th, at 6:00 p.m., at City Hall for approval of a Council Order to abate this nuisance. Failure to comply with the Order would mean that the city will abate the hazard and charge you, as the property owner, for the associated costs.

You are free to attend this meeting and discuss this with the Council. If you have any questions regarding the Nuisance Ordinance, or how you may comply, please feel free to contact the Menahga Police Department or the City Clerk's Office at 564-4557.

Sincerely,

Curt Kreklau, Jr.
City Administrator

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Menahga, MN 56464
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March 12, 2021

Mr. Darin Markkula
613 2nd St SE
Menahga, MN 56464

Dear Mr. Markkula,

The Menahga City Council has approved a Council Order for abatement of the nuisance on your property. The Order is in regard to the vehicles and assorted junk on your property. For reference, the following, according to Ordinance, are declared to be nuisances:

Chapter 92.16, Subd E, and 92.18, Public Nuisance Subd M: Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or unlicensed vehicles or other materials in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from the accumulation.

The City Council plans to implement the abatement process for this nuisance under **Chapter 92.20 (A) Notice and (B) Procedure**. The Order is to abate the nuisance situation on your property located at 613 2nd St SE by **March 22, 2021**. Failure to comply with the Order would mean that the city will abate the hazard and charge you, as the property owner, for the associated costs.

If you have any questions regarding the Order, or how you may comply, please feel free to contact the Menahga Police Department or the City Clerk's Office at 564-4557.

Sincerely,

Curt Kreklau, Jr.
City Administrator

**City of Menahga
Planning Commission Minutes
Tuesday, January 26, 2021**

A. Call to Order

The Menahga Planning Commission held a meeting on Tuesday, January 26, 2021. Administrator Curt Kreklau Jr. called the meeting to order at 5:00 pm

B. Roll Call

Comprising a quorum of the Planning Commission, the following members were present in the Council Chambers:

Quade Mayer Larry Murphy Brad Carlson
Councilmember Art Huebner

Also present: Administrator Curt Kreklau Jr and Jeramiah Erickson

C. Pledge of Allegiance

D. Approval of minutes of December 22, 2020

Main Motion: To approve December 22, 2020 Planning Commission Minutes as presented.

Moved by:	Mayer
Seconded by:	Huebner
Action:	Motion carried by a unanimous voice vote
In favor:	Mayer, Carlson, Huebner, Murphy
Opposed:	None

E. Zoning Administrator Update

a. Wild Walleye Updates

1. Police Chief, Fire Chief, State Fire Inspector, and Administrator Kreklau went and inspected.
2. They will have an inspection with their insurance company scheduled for next week.
3. They have a meeting with Wadena County Public Health scheduled for next week as well.

F. Comprehensive Plan Updates

G. Resignation(s)

H. New Commission Member

Main Motion: To appoint Jeramiah Erickson to Planning Commission vacancy

Moved by:	Carlson
Seconded by:	Murphy
Action:	Motion carried by a unanimous voice vote
In favor:	Mayer, Carlson, Huebner, Murphy
Opposed:	None

I. Chair and Vice Chair

Main Motion: To appoint Quade Mayor as Planning Commission Chair for 2021

Moved by:	Carlson
Seconded by:	Murphy
Action:	Motion carried by a unanimous voice vote
In favor:	Mayer, Carlson, Huebner, Murphy
Opposed:	None

Main Motion: To appoint Larry Murphy as Planning Commission Vice Chair for 2021

Moved by:	Carlson
Seconded by:	Mayer
Action:	Motion carried by a unanimous voice vote
In favor:	Mayer, Carlson, Huebner, Murphy
Opposed:	None

- Ordinance states Planning Commission Meetings are to be held on the third Thursday of every month. Census was to go back to third Thursday meetings.

J. Adjournment

Main Motion: To adjourn at 5:36

Moved by:	Murphy
Seconded by:	Carlson
Action:	Motion carried by a unanimous voice vote
In favor:	Mayer, Carlson, Huebner, Murphy
Opposed:	None

Administrator, Curt Kreklau Jr.

Planning Commission Chair, Quade Mayer



INFORMATION MEMO

Land Use Variances

Learn about variances as a way cities may allow an exception to part of their zoning ordinance. Review who may grant a variance and how to follow and document the required legal standard of “practical difficulties” (before 2011 called “undue hardship”). Links to a model ordinance and forms for use with this law.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 462.357, subd. 6.](#)

I. What is a variance

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located.

II. Granting a variance

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

III. Legal standards

When considering a variance application, a city exercises so-called “quasi-judicial” authority. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

A. Practical difficulties

“Practical difficulties” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

1. Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

2. Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

RELEVANT LINKS:

[2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6.](#)

[Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010).

[Minn. Stat. § 462.357, subd. 6.](#)

[Minn. Stat. § 394.27, subd. 7.](#)

See Section I, *What is a variance.*

See Section IV-A, *Harmony with other land use controls.*

3. Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

B. Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. After a long and contentious session working to restore city variance authority, the final version of HF 52 supported by the League and allies was passed unanimously by the Legislature. On May 5, Gov. Dayton signed the new law. It was effective on May 6, the day following the governor’s approval. Presumably it applies to pending applications, as the general rule is that cities are to apply the law at the time of the decision, rather than at the time of application.

The 2011 law restores municipal variance authority in response to a Minnesota Supreme Court case, *Krummenacher v. City of Minnetonka*. It also provides consistent statutory language between city land use planning statutes and county variance authority, and clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

In *Krummenacher*, the Minnesota Supreme Court narrowly interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test is not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance. The new law changes that factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. Also included is a sentence new to city variance authority that was already in the county statutes.

RELEVANT LINKS:

[Issuance of Variances](#), LMC Model Ordinance.

[Variance Application](#), LMC Model Form.
[Adopting Findings of Fact](#), LMC Model Resolution.

[Minn. Stat. § 462.357, subd. 6.](#)

See LMC information memo, [Taking the Mystery out of Findings of Fact](#).

[Minn. Stat. § 462.357, subd. 6.](#)

C. City ordinances

Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first. In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute.

The models linked at the left reflect the 2011 variance legislation. While they may contain provisions that could serve as models in drafting your own documents, your city attorney would need to review prior to council action to tailor to your city's needs. Your city may have different ordinance requirements that need to be accommodated.

IV. Other considerations

A. Harmony with other land use controls

The 2011 law also provides that: "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan." This is in addition to the three-factor practical difficulties test. So a city evaluating a variance application should make findings as to:

- Is the variance in *harmony with* the purposes and intent of the ordinance?
- Is the variance *consistent with the comprehensive plan*?
- Does the proposal put property to use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

B. Economic factors

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the three statutory factors are met.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 6.](#)

C. Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

D. Conditions

A city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

V. Variance procedural issues

A. Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

B. Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

RELEVANT LINKS:

[Minn. Stat. § 15.99.](#)

[Minn. Stat. § 15.99, subd. 2.](#)

See LMC information memo, *Taking the Mystery out of Findings of Fact.*

[Minn. Stat. § 15.99, subd. 2.](#)

Jed Burkett
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C. Time limit

A written request for a variance is subject to Minnesota’s 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval.

D. Documentation

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

VI. Variances once granted

A variance once issued is a property right that “runs with the land” so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

VII. Further assistance

If you have questions about how your city should approach variances under this statute, you should discuss it with your city attorney. You may also contact League staff.



City of Menahga
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Variance Information

What is a variance?

The Menahga Municipal Code allows for a variance from certain zoning requirements. A variance is described as:

VARIANCE. A modification or variation of the provisions of the chapter, as applied to a specific piece of property only under the circumstances provided for in § 151.53, except that modification in the allowable uses within a district shall not be considered a *VARIANCE*. (Menahga Municipal Code 151.03)

Menahga Municipal Code 151.53 Adjustments and Variances.

- (A) *Board of Appeals and Adjustments.* The City Council shall be the Board of Appeals and Adjustments for this city, and as provided by M.S. § 462.354, Subdivision 2 shall have the powers granted under M.S. § 462.357, Subdivision 6, as they may be amended from time to time.
- (B) *Variances.* Pursuant to M.S. § 462.357, Subdivision 6, as it may be amended from time to time, the City Council, acting as a Board of Appeals and Adjustments, may issue variance from the provisions of this zoning code. A variance is a modification or variation of the provisions of the zoning code as applied to a specific piece of property.
- (1) Variances shall only be permitted:
 - (a) When they are in harmony with the general purposes and intent of this section; and
 - (b) When the variances are consistent with the comprehensive plan.
 - (2) Variances may be granted when the applicant for the variance established that there are practical difficulties in complying with the zoning ordinance.
 - (3) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PRACTICAL DIFFICULTIES. As used in connection with the grant of a variance, means that:

1. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
 2. The plight of the landowner is due to circumstances unique to the property not created by the landowners; and
 3. The variance, if granted, will not alter the essential character of the locality. 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.
- (4) Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, Subdivision 14, when in harmony with the section. 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.

What is the process to obtain a variance?

The first step is to submit an application to the City Administrator. Be sure to provide enough information in the application so the reason for your variance application can be clearly understood.

Is there a fee?

Yes. The fee for a variance request is \$150.00. The fee must be submitted with your application.

What happens after my variance request is submitted?

- The Administrator will forward the request to the Planning Commission within 30 days of receiving the application.
- The Planning Commission will schedule a meeting and hold a public hearing. Prior to the meeting, notice is sent to all property owners within 300 feet of the subject property. The owner's names are from the County tax records.
- After the Planning Commission meeting, the Administrator will forward the Commission's report to the City Council.
- The City Council, during one of their meetings, will address the variance application and may vote on the variance or refer it back to the Planning Commission for further consideration.
- When making their decision, the City Council will consider for the property's existing conditions, conservation of property values, and the direction of building development to the best advantage of the entire city.
- If the City Council approves the variance, the variance takes effect on the date set by the council.
- If the City Council does not approve the variance, the requested activity will not be permitted in the City.



City of Menahga
115 2nd Street NE • PO Box C
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Variance Application
(\$150.00 Application Fee)

Application date: _____

Applicant name: _____

Mailing address: _____

City: _____ State: _____ Zip: _____

Phone numbers: _____

Email address: _____

Property address: _____

Parcel #: _____

Property size: _____ Width _____ Length _____ Total square feet

What is the property's current use?: _____

The property is currently zoned:

- A-R, agricultural residential
- R-2, multiple-family residence
- C-1, commercial
- I, industrial
- M-H, manufactured home residence

- R-1, one-to four-family residence
- C-B, central business
- C-2, highway commercial
- S-D, shoreland district

Explain in detail the reason for your request:

Please feel free provide any additional supporting documents and data to help this request.

Applicant statement. I certify that I am the applicant named in this application and that I have familiarized myself with the zoning information with respect to preparing and filing this application. I further certify that the statements made in this application are true and accurate to the best of my knowledge.

Applicant Signature

Date

Zoning Administrator

Date

Office Use

Date application received: _____
Filing fee included?: _____
Forwarded to the Planning Commission on: _____
Planning Commission meeting date: _____
Notices were mailed to the property owners on: _____
Planning Commission decision was forwarded to the Council on: _____
City Council meeting date: _____
Resolution Number: _____
Did the Council adopt the resolution?: _____
Effective date: _____

