



City of  
**BRAHAM**

"Building A Better Tomorrow"

201 Broadway Avenue South  
PO Box 521  
Braham, MN 55006  
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**Planning Commission Meeting**  
**Date/Time: March 8, 5:30 pm**  
**Location: Braham City Hall Council Chambers**

**AGENDA**

1. Call to Order
2. Pledge of Allegiance
3. Introductions of Members
4. Public Hearing – 412 2<sup>nd</sup> St SW Variance Request to Construct 26x20 carport cover
  - A. Public Testimony
  - B. Commission Member discussion and decision
5. Adjourn



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Variance Request Staff Report

**Prepared by**

Linda J. Woulfe, Interim City Administrator

**Background**

Jeff and Mary Lodin have applied for a variance to build a 26 x 20 carport over an existing parking slab (area highlighted in yellow below). The carport will be shingled and the shingles will match the house's roof. The parking slab adjoins Park Manor's parking lot.



**Zoning Code Language**

**154.280 ACCESSORY BUILDINGS; USES, EQUIPMENT.**

- (A) *General statements.* An accessory building shall be considered an integral part of the principal building if it is connected to the principal building by a structured passageway.
- (B) *Location.* No detached accessory building shall be located in the front yard.
- (C) *Height.* Accessory building sidewalls shall not exceed ten feet in height.
- (D) *Setbacks.* Accessory buildings shall:
  - (1) Be located five feet or more from all lot lines of adjoining lots; and

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Mayor Patricia Carlson \* Councilmember Vicki Ethen \* Councilmember Robert Knowles  
Councilmember Jeremy Kunshier \* Councilmember Seth Zeltinger

(2) Not be located within a utility easement or drainage easement.

(E) *Size.* Maximum accessory building square footage shall be:

(1) One thousand and eight square feet for a lot greater than, or equal to, zero acres, and less than, or equal to, 0.59 acres;

(2) One thousand, two hundred square feet for a lot greater than, or equal to, 0.60 acres, and less than, or equal to, 0.74 acres;

(3) One thousand, four hundred and forty square feet for a lot greater than, or equal to, 0.75 acres; and/or

(4) Where residents own two or more contiguous lots, the acreage may be combined.

(F) *Building design standards.* The architectural design and appearance of all buildings and structures shall comply with the following standards:

(1) Designed to the State Building Code;

(2) The wall or walls that face a street must have siding of like material to the principle structure, or consistent with residential structures. Buildings on a corner lot must comply with § 154.277(C) on both sides of the structure that face the street;

(3) Metal lawn or storage sheds 120 square feet or less in floor area shall be exempt from these standards; and

(4) No tarp like structures.

#### **§ 154.047 MAXIMUM GROUND COVERAGE; GROUND FLOOR AREA.**

(A) The sum total of the ground area covered by all structures and impervious areas shall not exceed 33% of the lot on which the structures are located.

(B) Minimum ground floor area shall be 960 square feet for a single-family dwelling unit. An additional 100 square feet is required for each additional bedroom over three bedrooms. Houses having one and one-half or more stories shall have at least 720 square feet on the main floor. Two-family dwellings must have at least 860 square feet of ground floor area.

#### **Why is a variance needed?**

This parcel has exceeded its maximum ground coverage area as allowed by ordinance. This makes it a non-conforming parcel in terms of city ordinance and non-conforming parcels need express permission to make increase the non-conformity.

#### **Variance Criteria**

When considering a variance request the Planning Commission should keep in mind the following criteria:

Reasonableness	Is the use reasonable?
Uniqueness	Is the problem due to circumstances unique to the property not caused by the landowner?

Essential Character	Will granting the variance affect the essential character of the neighborhood or the City (think about size, materials, will it look out of place with the surrounding area)?
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According to the League of Minnesota Cities “State law says, ‘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’ ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will alter the essential character of the locality.”

#### **Next steps**

The Planning Commission should discuss the variance criteria and determine whether to grant the variance.

Once Planning Commission makes their decision, staff will prepare official findings of fact to be sent to City Council for their consideration on the variance request.



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# Land Use Variances

Published: May 21, 2021

*See accompanying model documents below.*

*This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.*

## What is a variance?

A variance is a way that cities 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 seeks a variance to allow a use of their property that is not 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 ([Minn. Stat. § 462.357, subd. 6](#)).

## Granting a variance

Minnesota law provides for a body called the board of adjustment and appeals to hear requests for variances ([Minn. Stat. § 462.357, subd. 6](#)). 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 city may grant a variance 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 ([Minn. Stat. § 462.357, subd. 6](#)). If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when:

- They are in harmony with the general purposes and intent of the ordinance, and
- The terms of the variance are consistent with the comprehensive plan.

## Legal standards

When considering a variance application, a city exercises “quasi-judicial” authority. This means the city acts like a judge in evaluating the facts against the legal standard. The city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. If the applicant meets the standard, then the city may grant the variance.

In contrast, when the city writes the rules in the zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

## Practical difficulties

“Practical difficulties” is a legal standard 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.

### 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.

### 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.

### 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.

## Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law ([2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6](#)).

The 2011 law restored municipal variance authority in response to a Minnesota Supreme Court case ([Krummenacher v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. June 24, 2010)). The law now does both of the following:

- Provides consistent statutory language between city land use planning statutes ([Stat. § 462.357, subd. 6](#)) and county variance authority ([Minn. Stat. § 394.27, subd. 7](#)).

- 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.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of

- reasonableness
- uniqueness
- essential character

The League has developed models that reflect current variance law. Your city attorney should review these models with you prior to council action to tailor them for your city’s needs.

- [View the League model ordinance on issuance of a zoning variance \(doc\)](#).
- [View the League model variance application form \(doc\)](#).
- [View the League model resolution adopting findings of fact \(doc\)](#).

## Other considerations

### Harmony with other land use controls

State law says, “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” ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will alter the essential character of the locality.

[For more about findings of fact, see \*Taking the Mystery out of Findings of Fact\*](#)

### Economic factors

Sometimes landowners insist they deserve a variance because they have already incurred substantial cost. They may also argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). Rather, practical difficulties exist only when the three statutory factors are met.

### 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, their task is limited to evaluating how the variance application meets the statutory practical difficulties factors.

Residents can often provide important facts to help the city address these factors, but unsubstantiated opinions and reactions to a request are not a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, it could be overturned by a court if challenged.

## Conditions

A city may impose conditions when it grants a variance. Conditions must be directly related to and bear a rough proportionality to the impact created by the variance ([Minn. Stat. § 462.357, subd. 6](#)). For instance, if a variance is granted to exceed a height limit, any conditions attached should presumably relate to lessening the effect of excess height.

## Variance procedural issues

### Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied. 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.

### 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 bound by decisions made for prior variance requests. If a city finds it is issuing many variances to a particular zoning standard, the city should consider amending the ordinance to change the standard.

### Time limit

A written request for a variance is subject to Minnesota's 60-day rule. It 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 considered an approval ([Minn. Stat. § 15.99](#)).

### Documentation

Whatever its decision, a city should create a record that supports it.

If denying the variance, the 60-day rule requires the reasons for the denial be put in writing within the statutory time period ([Minn. Stat. § 15.99, subd. 2](#)). Even if the variance is approved, a written statement explaining the decision is advisable.

The written statement should address each of the three practical difficulties factors and list the relevant facts and conclusions for each factor.

[For more about findings of fact, see \*Taking the Mystery out of Findings of Fact\*](#)

## Variances once granted

A variance is a property right that "runs with the land." That is, 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.

**Models used in this discussion:**

- Issuance of Variances, LMC model ordinance (doc)
- Variance Application, LMC model form (doc)
- Adopting Findings of Fact, LMC model resolution (doc)

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Your LMC Resource

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