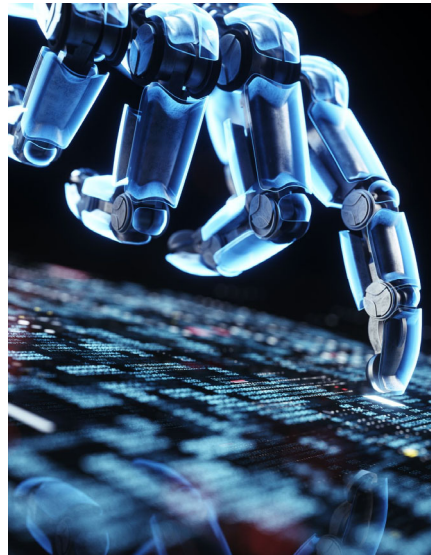


PLANNING COMMISSION/ HERITAGE PRESERVATION COMMISSION




PC/HPC/CC

Who holds the power to make
decisions?



Permits/Action	Recommendation	Action	Appeals Board
Administrative decisions		CDD	PC
Conditional use permit	PC	CC	
Certificate of compliance		CDD	CC
Design review		HPC	CC
Heritage preservation use variance	PC	HPC	CC
Interim use permit	PC	CC	
Planned unit development	PC	CC	
Sign design approval		HPC/CDD	CC
Site plan review	PC	CC	
Variance		PC	CC
Demolition permit		HPC	CC
Zoning ordinance text/map	PC	CC	



Statutes
on
Planning

STATUTES

462.351 MUNICIPAL PLANNING AND DEVELOPMENT; POLICY STATEMENT.

The legislature finds that municipalities are faced with mounting problems in providing means of guiding future development of land so as to:

- Insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities,
- Preserve agricultural and other open lands, and
- Promote the public health, safety, and general welfare.

STATUTES

... Municipal planning, by providing public guides to future municipal action, enables other public and private agencies to plan their activities in harmony with the municipality's plans.

STATUTES

462.354 ORGANIZATION FOR PLANNING.

A **municipality** may by charter or ordinance create a planning agency. ...

It may consist of a planning commission... The planning commission may be provided with staff which may be a division of the administrative structure of the municipal government.

The Rules



The Rule Books

• Must respect the following Rule Books when considering all applications:

- Comprehensive Plan
- Zoning Ordinance
- Subdivision Ordinance



Comprehensive Plan

462.355 ADOPT, AMEND COMPREHENSIVE PLAN

Subdivision 1. **Preparation and review.**

The planning agency shall prepare the comprehensive municipal plan.



Comprehensive Plan



Guide for future development



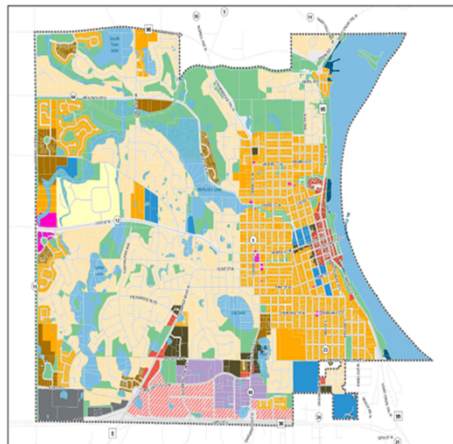
Strategic map to reach the vision of the City



Broad brush



Takes priority over other Rule Books



Stillwater
Minnesota

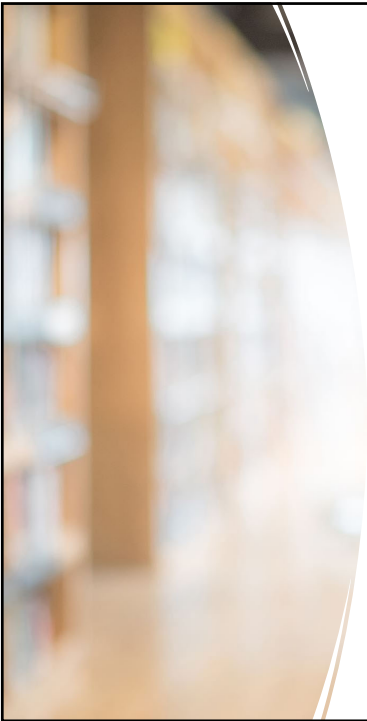
Future Land Use

- City Limit
- Public Land Use
- Low Density Residential
- Low Density Residential
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Neighborhood Commercial
- Community Commercial
- Community Commercial
- Community Commercial
- Business Park/Industrial
- Regional Mixed Use
- Industrial
- Research, Development Park
- Park, Rec or Open Space
- Marina
- Water
- Open Water
- None

Figure 2.11: Future Land Use

0 1000 2000
Feet
PLAN OF 11

Land Use Map - 2040



Zoning Ordinance

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subdivision 1. **Authority for zoning.**
For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas,...

Zoning Ordinance

the location, height, width, bulk, type of foundation	number of stories	size of buildings and other structures
the percentage of lot which may be occupied	the size of yards and other open spaces	the density and distribution of population
the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes ...		

Subdivision Regulations

462.358 OFFICIAL CONTROLS: SUBDIVISION REGULATION

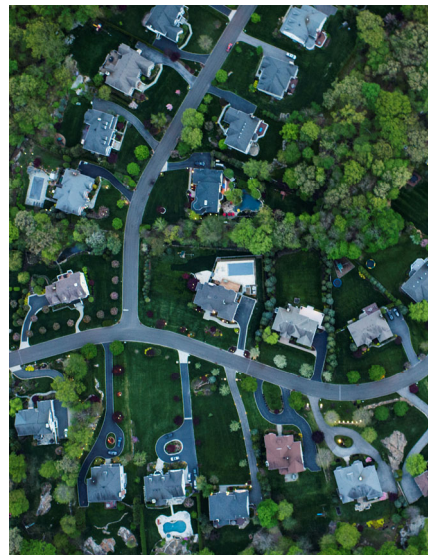
Subd. 1 a. Authority.

- To protect and promote the public health, safety, and general welfare,
- to provide for the orderly, economic, and safe development of land,
- to preserve agricultural lands,
- to promote the availability of housing affordable to persons and families of all income levels, and
- to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, ...

Subdivision Regulations

Regulates:

- Lot sizes
- Complementary streets to existing land
- Requirement for parks, trails
- Preservation of natural resources (park dedication fees)



Subdivision Regulations

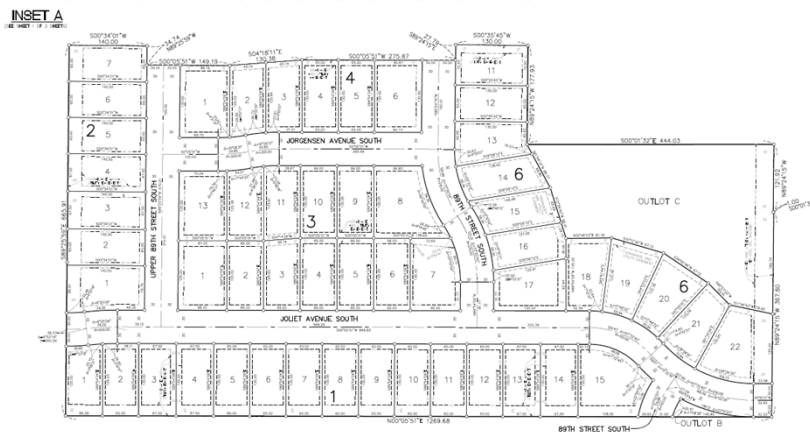
Ensures that new development and redevelopment meets standards for a safe, functional and enjoyable community

More detailed requirements than Comp. Plan and Zoning Ordinance

Minutia: public trails, parks, utilities, streets, boulevards, lighting, signs

Written by Planners and Engineers

Plats



Subdivision Regulations

Platting

- 2 steps
 - Preliminary Plat approval (120 days)
 - General nature, design and scope of project
 - May add conditions such as:
 - Add sidewalks/trails
 - Require MNDOT review & approval
 - Final Plat approval (60 days)
- Or 1 step in a combined hearing and approve both simultaneously



Public Hearings

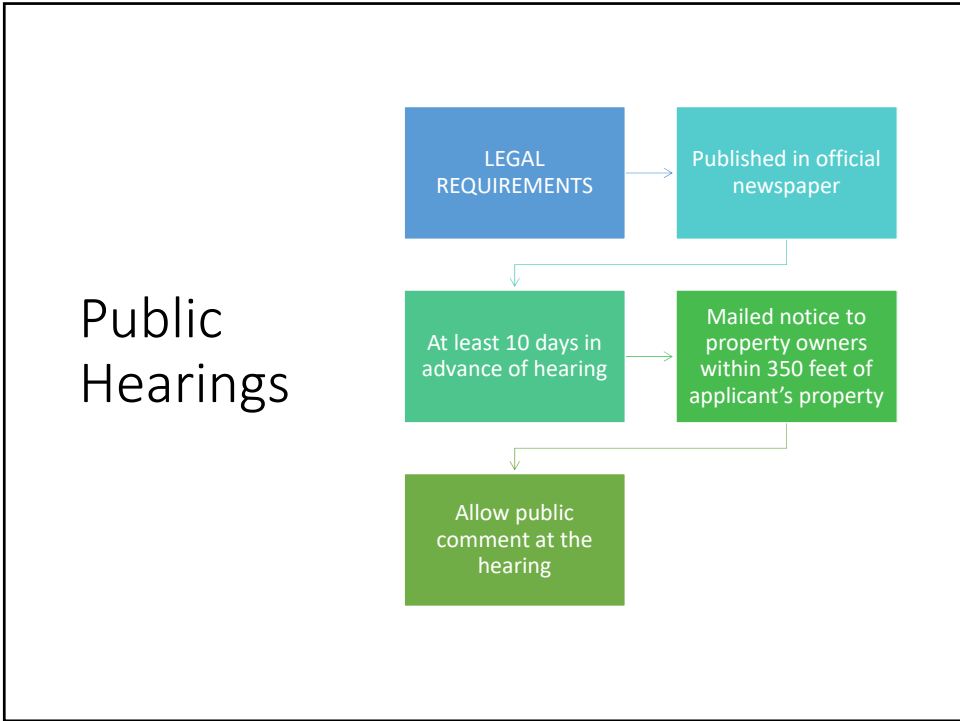
What Kinds of Matters Require a Public Hearing by State Law?

- Variance
- CUP
- Interim Use Permit
- Zoning Ordinance Amendments (text or map)
- Comprehensive Plan Amendments
- Preliminary Plat Approvals

Public Hearings

What OTHER Kinds of Matters Require a Public Hearing by Ordinance?

- Designation of Heritage Preservation Sites (HPC)
- Designation of Historic Districts (HPC)
- HPC Use Variance (PC)
- PUD (CC)
- Plat (CC)
- Appeals (CC)
- Other



Public Hearings

- *Why is a Public Hearing Important?*
- Due Process:
 - Notice = to all interested parties, including the public
 - The Record = full presentation by the applicant, City and the public

Public Hearings

- *Why is Due Process important?*
 - 14th Amendment to the US Constitution
 - Art. 1 Section 7 of the MN Constitution
 - Gives people an opportunity to present their case when a property interest is at stake

Public Hearings

- Make a decision and adopt Findings of Fact that:
 - Articulate the basis for the decision
 - Communicate to the applicant the approval or denial and the reasons therefor

Public Hearings

- *Valid Findings of Fact for Approving Applications*
 - Consistent with the Comprehensive Plan
 - Not endanger, injure, detrimentally impact surrounding properties
 - Meets definition of “practical difficulties” when applicable (Variances)

Public Hearings

- Not *Valid Findings of Fact for Approving Applications*
 - Proposed use is better than what’s there now
 - New use will increase the property taxes
 - Owner can’t sell property with current zoning
 - Owner already spent money assuming application would be approved
 - The building materials we require are too expensive

Public Hearings

- *Valid Findings of Fact for Denying Applications*
 - Not consistent with the Comprehensive Plan
 - The application will impede the normal and orderly development and improvement of surrounding property;
 - Does not meet elements of “practical difficulties”

Public Hearings

- *Not Valid Findings of Fact for Denying Applications*
 - NIMBYs (Not In My Back Yard) or CAVE (Citizens Against Virtually Everything) all came to the meeting
 - I don't like these kinds of businesses
 - This is not the highest and best use of the property
 - We don't need any more of those kinds of businesses

Public Hearings

5 Appropriate Questions to ask at a PH:

- Is the existing parking lot size and number of stalls adequate for this new use?
- Is the landscape plan sufficient to screen the headlights from the neighboring residential property?
- Which entrance will your trucks use to access the loading dock?
- Is it possible to move the trash enclosure to a different part of the site?
- Have you done a traffic study?

Public Hearings

5 Inappropriate Questions to ask at a PH:

- Can you change your sign logo/colors?
- Do you use union labor to construct your buildings?
- Can you change the design of your building?
- Will you be recruiting employees who live in the community for your business?

Public Hearings

You are the finders of fact at the PH, based on the information presented at the PH.


Any information you receive outside of the meeting from the property owner, neighbors, etc. is hearsay.

If that person has a message to tell, then they need to say it to the entire group at the PH or submit it in writing to become part of the record.

Case Study

Hoyt v. Minneapolis






Hoyt et. al. v. City of Minneapolis

A public hearing gone wrong...

Facts:
Planning applications for a mixed-use tower and 2 townhouse structures in the Loring Hill neighborhood

Public Hearings



- The Players
 - City Council
 - Appeals Committee
 - Planning Commission

Public Hearings

Planning Commission denied all applications



Developer appealed to the City Council claiming they were denied their right to a fair hearing (Due Process)



Public Hearings

At trial, the Developer introduced copies of emails from a Council member to various constituents:

- "I have already come out against the height of the project"
 - "I ... will continue to represent the many voices in opposition to the project"
 - "I will do my best to advocate against the appeal in committee"
-

Public Hearings

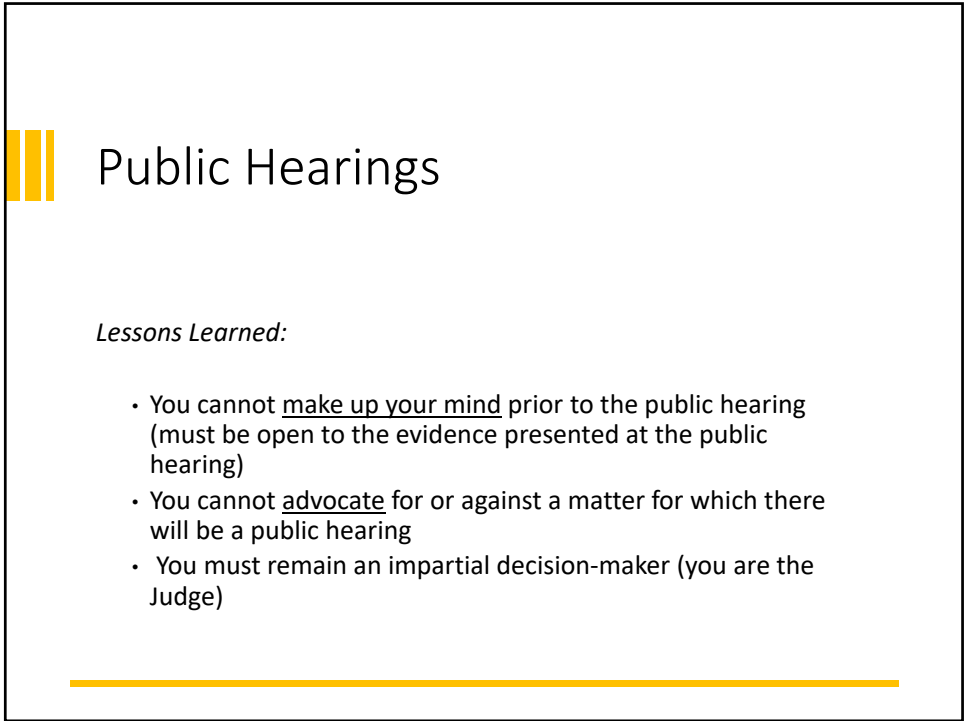
“[P]lease do not be spreading the word that I have made up my mind and am working to oppose the variance on this project. If the developer hears this they will rightfully question that they didn’t get a fair hearing with me and that I made up my mind prior to the public hearing.”



Public Hearings

What did the District Court decide?

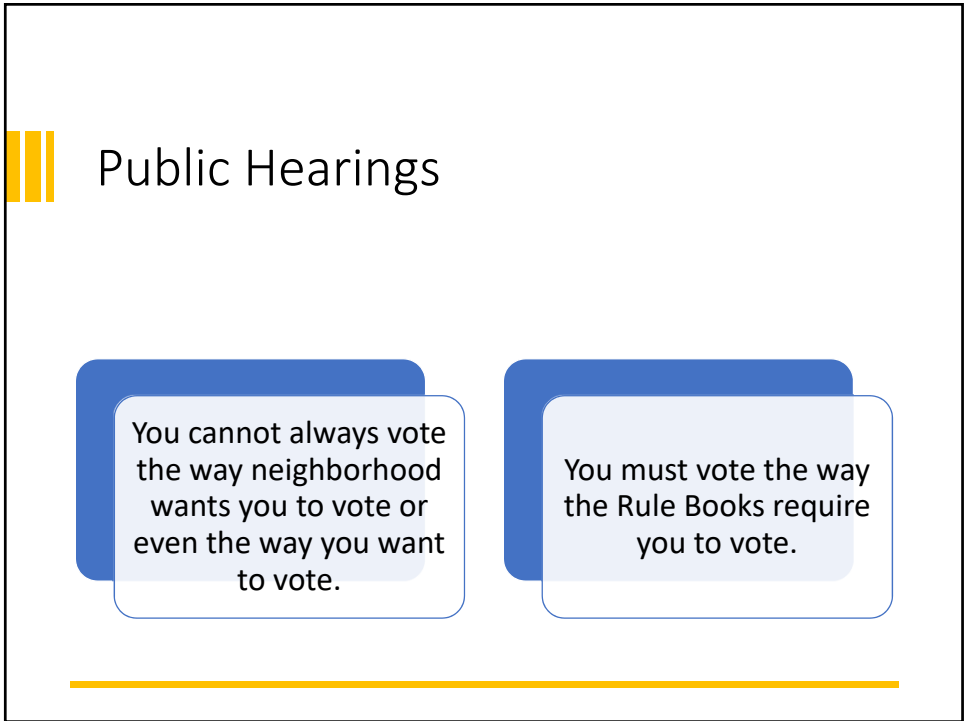
The Council member took a position in opposition to the applications and exhibited a closed mind prior to the public hearing. This was a violation of the developer’s federal constitutional right to due process.



Public Hearings

Lessons Learned:

- You cannot make up your mind prior to the public hearing (must be open to the evidence presented at the public hearing)
- You cannot advocate for or against a matter for which there will be a public hearing
- You must remain an impartial decision-maker (you are the Judge)



Public Hearings

You cannot always vote the way neighborhood wants you to vote or even the way you want to vote.

You must vote the way the Rule Books require you to vote.



60-DAY RULE

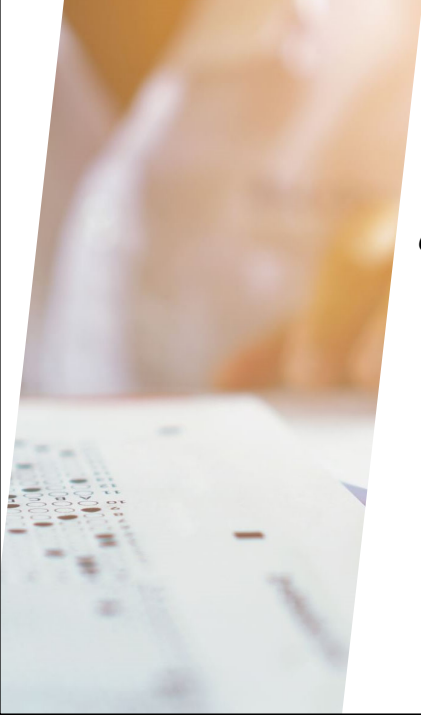


60-Day Rule

Application submitted

- 15 business days to determine if it is complete

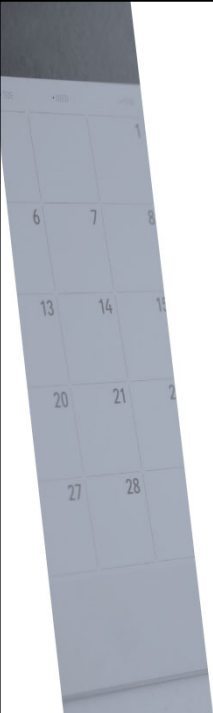
- If incomplete, must reject it in writing and state the reasons as to why it is incomplete



60-Day Rule

General Rule:

- Failure of the decision-maker to act on a zoning application within 60 days after receipt of a completed application results in **approval** of the request
- 1-2 meetings to consider an application



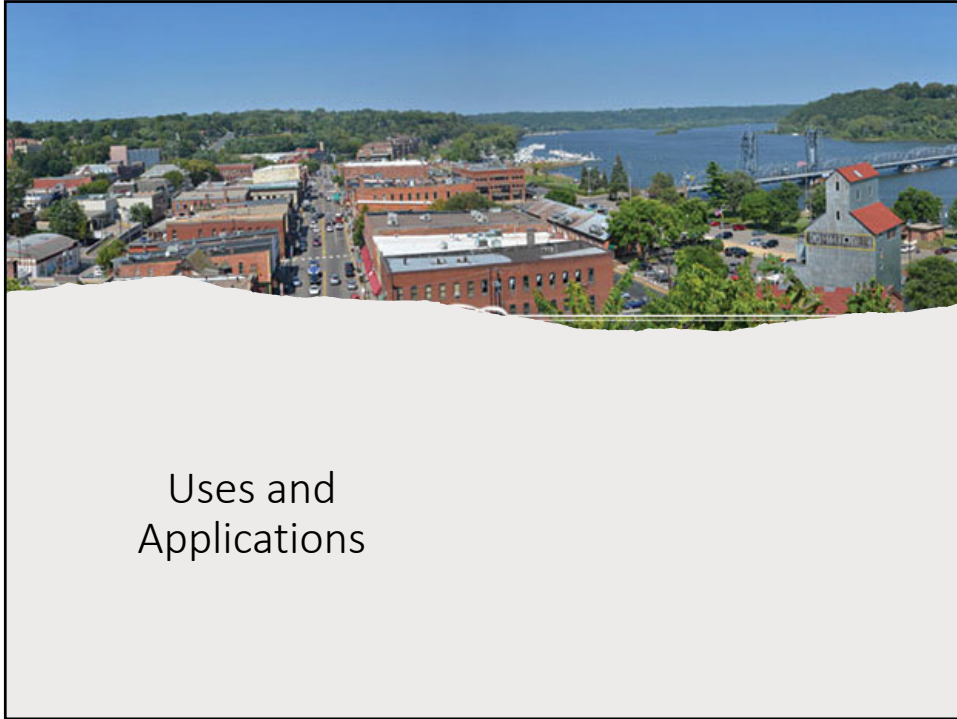
60-Day Rule

Statutory Exceptions:

City may extend the time to act on an application for up to an additional 60 days

- Provide written notice within the first 60 days
- State the reasons for the extension
- State the length of the extension

Applicant may request an extension



Types of Uses

PRINCIPAL: The Main/Primary Use of the Property

ACCESSORY: A Secondary/Subordinate Use (not allowed on its own)

Case Study Principal vs. Accessory Use

- Property is zoned commercial/office
- Tenant uses its space as an office for an auto repair business, which is located off-site
- Tenant (with landlord's permission) makes an application to construct an accessory garage in the parking lot
- Auto repair as a principal use is not allowed in the zoning district

Should you allow the accessory garage?



Principal vs. Accessory
Office Use with Service Garage

Permitted Use

A use that is **permitted** “as of right” with no special approval required or conditions attached.



Conditional Use

A **permitted use** to which **reasonable conditions** may be attached based on factual findings.



Conditional Use Permit

- In order to approve a Conditional Use Permit:
 - Must be compatible with the existing neighborhood
 - Must conform to the Comp. Plan
 - Cannot endanger public health, safety, welfare

Conditional Use Permit

- Once granted, cannot be revoked unless there is a violation
- May add reasonable conditions that are directly related to the use
- Recorded against the property

Conditional Use Permit

- Reasonable Conditions

- Fence/screening to protect adjacent properties
- Drive-thru lane must close at 10 p.m. if located next to single-family
- Extra sound-proofing in walls

Reasonable Conditions

Case Studies

Reasonable Conditions

*Harstad v. City of Woodbury (2018)
(Minn. Supreme Court A16-1937)*

Property owner applied for subdivision application for 77 acres of land. City required a \$1,389,444 infrastructure charge for its "major roadway assessment program" to accommodate the anticipated traffic that would be generated by the development and surrounding areas.

City insisted that "new residential development pays its own way and that all associated costs for the installation of public infrastructure ... be the sole responsibility of the developing property owner."



Reasonable Conditions

The Supreme Court found that the City's infrastructure fee program was outside of the statutory authority.

Minn. Stat. §462.358 grants cities authority to pass regulations for the review and approval or disapproval of subdivision applications in order to protect the public health, safety and general welfare.

City can require financial security to ensure developer builds necessary infrastructure for its subdivision.

City can assess for road improvement projects.

City can negotiate with developers, but must do so *fairly* and not impose unreasonable requirements.

Case Study – PUD Reasonable Conditions

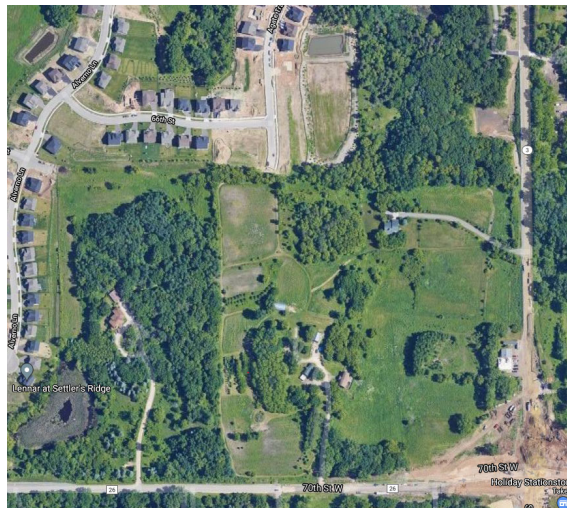
Development of 57 acres of vacant land into a luxury rental community with life-cycle housing

- Twin homes
- Cottage homes
- Townhomes
- Apartment building

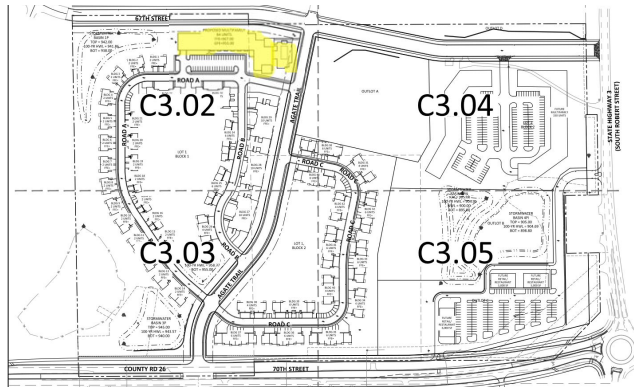
Site plan meets all zoning and subdivision requirements



As a condition of approval for the PUD, due to neighborhood opposition, City wants developer to move the apartment building to the opposite side of the development, away from existing residences



Reasonable
Conditions



Case Study - PUD

Case Study - PUD

Is it a reasonable condition to require that the developer move the apartment building to the opposite side of the development even though the development meets all aspects of the Zoning Ordinance and Subdivision Regulations and there is no evidence to support that there will be detrimental impacts to the surrounding neighborhood?

Interim Use

A temporary use of the land to which reasonable conditions may be attached and which will expire on a certain date, after a certain event, or when zoning ordinance no longer allows it.

Interim Use Permit

- An Interim Use Permit may only be granted if:
 - The use conforms to the zoning regulations;
 - The use is of limited duration that will terminate on a specific date or occurrence
 - It will not result in additional cost to the city
 - The applicant agrees to the conditions imposed

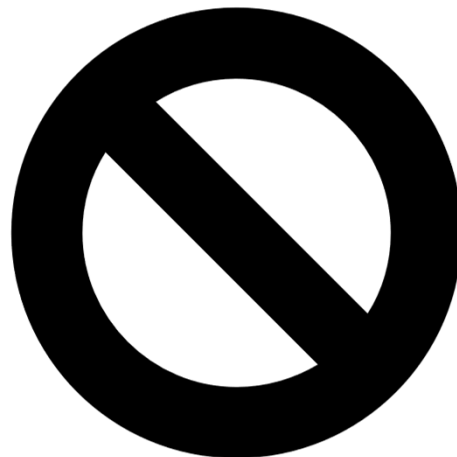
Interim Use

Examples of Interim Uses:

- Outdoor Seating
- Seasonal uses like garden structures
- Temporary structures that are easily removed
- Solar Farms



Non-Conforming Uses



Legal Non-Conformities

General Rule:

If lawful at the time of a Zoning Ordinance, a *change* in the zoning ordinance regarding a use, occupation or condition means the original use becomes a **legal non-conformity** and may continue



Non-Conformities

- Uses or conditions that pre-exist ordinance provisions
- Allowed to continue, be **repaired, maintained, replaced, and improved**, but not **expanded**

Non-Conformities

Repaired: Fixed

Maintained:
Continue in its
current condition

Replaced: Remove
and put back in same
location and style

Non-Conformities

- Difference between **expansion** and **improvement**?



Non-Conformities

State law requires it to become conforming when:

- Discontinued for more than one year, or
- Destroyed by more than 50% of market value by fire or other peril and no building permit applied for within 180 days

Case Study – Pawn America

- Business relocated
- Landowner removed tenant name from the sign
- After 1 year, city demanded sign be removed
- Landowner said sign was legal non-conforming






Case Study - Perkins

- In 1986 City Council approved a CUP for a 60 foot sign.
- The sign size and height are not allowed under current zoning.
- Building is now vacant and the sign faces have been removed but the pole and frame are still there.
- Can the sign be replaced in its current size and height?

Legal Non-Conformities

Cannot require as a condition of approval that a legal non-conforming condition be removed





Variance

- VARIANCE: Approval to depart from the requirements of the zoning ordinance; permission to “break the rules.”
 - Standard test – practical difficulty


Minn. Stat. 462.357 subd. 6 (2)

Variations shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variations are consistent with the comprehensive plan.

Variations may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to **use the property in a reasonable manner** not permitted by the zoning ordinance; the plight of the landowner is due to circumstances **unique to the property not created by the landowner**; and the variance, if granted, **will not alter the essential character of the locality**. Economic considerations alone do not constitute practical difficulties.

Practical difficulties


- Variances **may** be granted, but are not required to be granted, when there are “practical difficulties”
 - 1) Property will be used in a **reasonable manner**
 - 2) There are circumstances **unique to property** not caused by landowner
 - 3) The variance will not alter **essential character** of locality



Variance – Reasonable Manner

The owner wants to use the property in a reasonable way but cannot do so under the rules of the ordinance.

- Add a tool shed too close to the property line on single family residential property

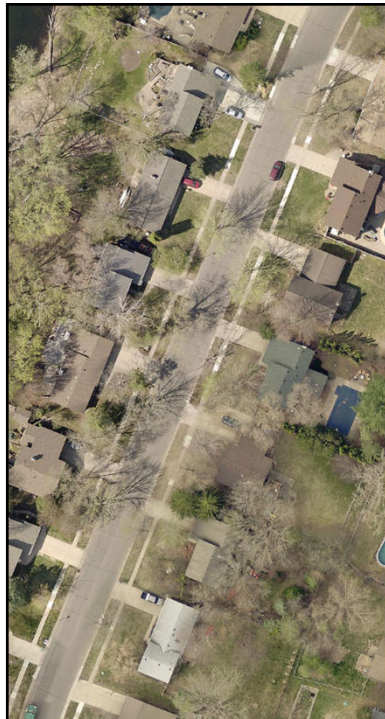


Variance – Unique Circumstances

Usually relates to unique physical characteristics of the property (tree, odd shape, too small)


Economic considerations alone are not sufficient (the building materials are too expensive)

Unique Circumstances cannot be created by the landowner (I have too many toys)

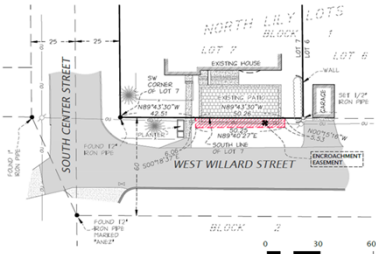


Variance – Character of Neighborhood

Look at whether the result will be out of scale, out of place or otherwise inconsistent with the area (screwing up the look)




PROJECT LOCATION:
1225 PINE STREET W.
STILLWATER, MN 55082
PROJECT NO. 202312
FORM 05/2019



ENCROACHMENT
I hereby certify that this survey, plan or report was
prepared by me, or under my direct supervision, and
I am a duly Licensed Land Surveyor under the laws
of the State of Minnesota.

WEL L. THOMPSON
Lic. No. 25718 Date: 7-14-22

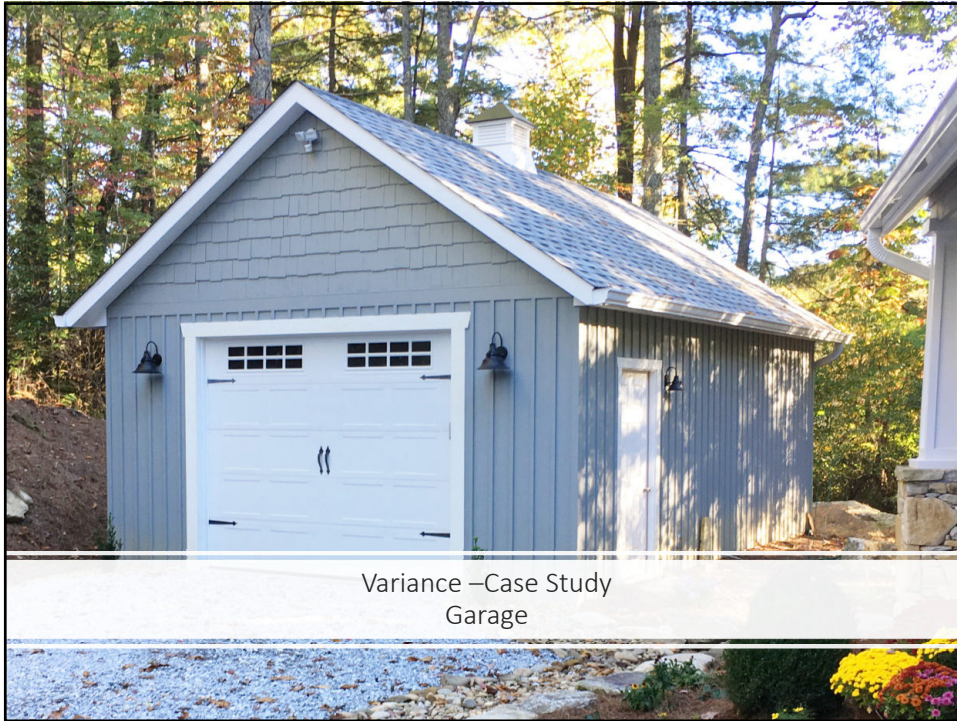


CORNERSTONE
LAND SURVEYING, INC.

Variance –
Adding
Conditions




Conditions must be directly related to and bear a rough proportionality to the impact created by the variance

- If a variance is for a setback, add a screening requirement



Variations –
Any
Flexibility

*Practical Difficulty does not
mean Undue Hardship:*

1. *Reasonable use* 
2. *Unique to the
Property* 
3. *Won't alter the
Character of the
Neighborhood* 

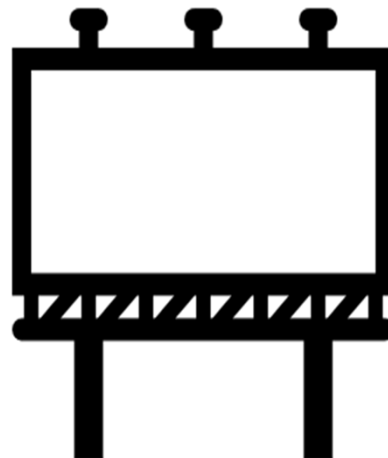
Uniqueness

Lot Coverage Variance Uniqueness

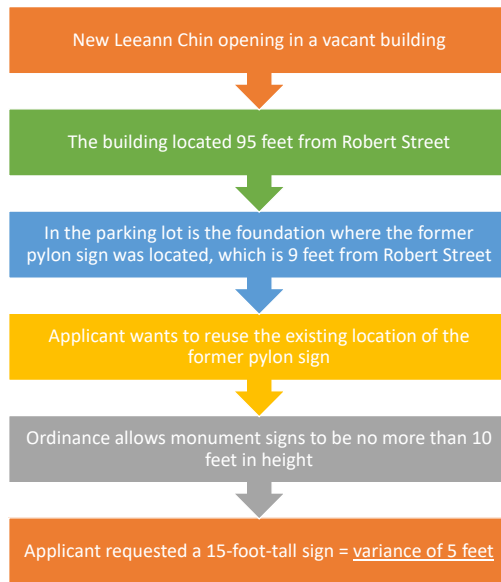
- Lot is just too small for a “normal” use
- No garage
- Single stall garage
- Inadequate Storage space
- Will not harm neighbors (adequate screening, dead end street)
- Everyone has one but me (deck, pool, bigger garage)



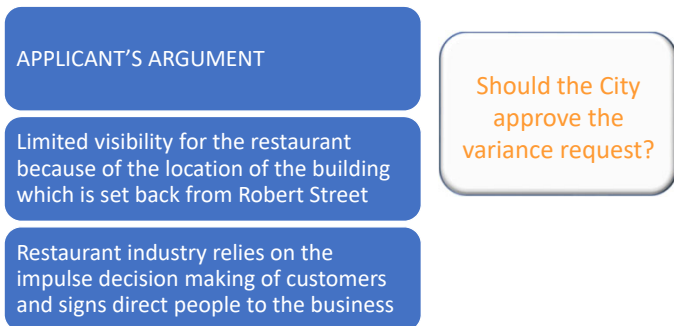
Case Study 5-8 Club vs. Leeann Chin Sign Variance



Leeann Chin Sign Height Variance



Leeann Chin Sign Height Variance





5-8 Club Sign Height Variance

New 5-8 Club opening in a vacant building

The building located 28 feet from Robert Street

There is an existing pylon sign, which is 14 feet from Robert Street

Applicant wants to reuse the existing location of the pylon sign

Ordinance allows monument signs to be no more than 10 feet in height

Applicant requested a 17-foot-tall sign = variance of 7 feet

5-8 Club Sign Height Variance

APPLICANT'S ARGUMENT

- Limited visibility of the restaurant because of the retaining wall and higher elevation to the south and the vegetation and Leeann Chin sign to the north

Should the City
approve the
variance request?



5-8 vs. Leeann Chin

“As the applicant states, signage is very important to their operation. The same can be said for all restaurants/retailers. Staff fears that approving the requested variance for the reasons provided would trigger similar requests. The existing sign code was specifically enacted to clean up visual clutter on Robert St. by no longer allowing taller/larger pylon signs. The elimination of pylon signs and recommendations for limiting visual clutter on Robert St. is a result of the Council approved Robert St. Renaissance Plan, which is included in the city’s Comprehensive Plan. Therefore, approving variances to go above the maximum size allowances counters the intent of the code and the Comprehensive Plan.”

The winner
is...



Uniqueness Findings for 5-8 Club

New redesign of Robert Street caused obscured sight lines

New light pole standards interfered with signage

Neighboring Leeann Chin sign to the north would block the view of a sign at the same height

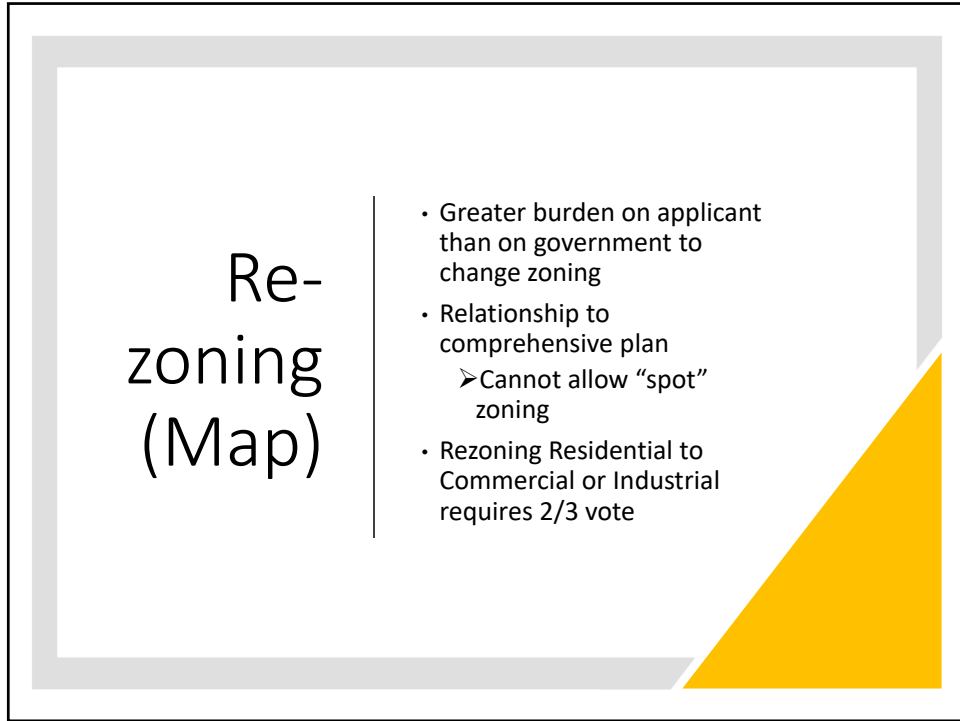
Zoning Ordinance Amendments

Zoning Ordinance amendment is changing the terms, classification or boundary of a Zoning District.

Text or Map amendment

Zoning Ordinance Amendment

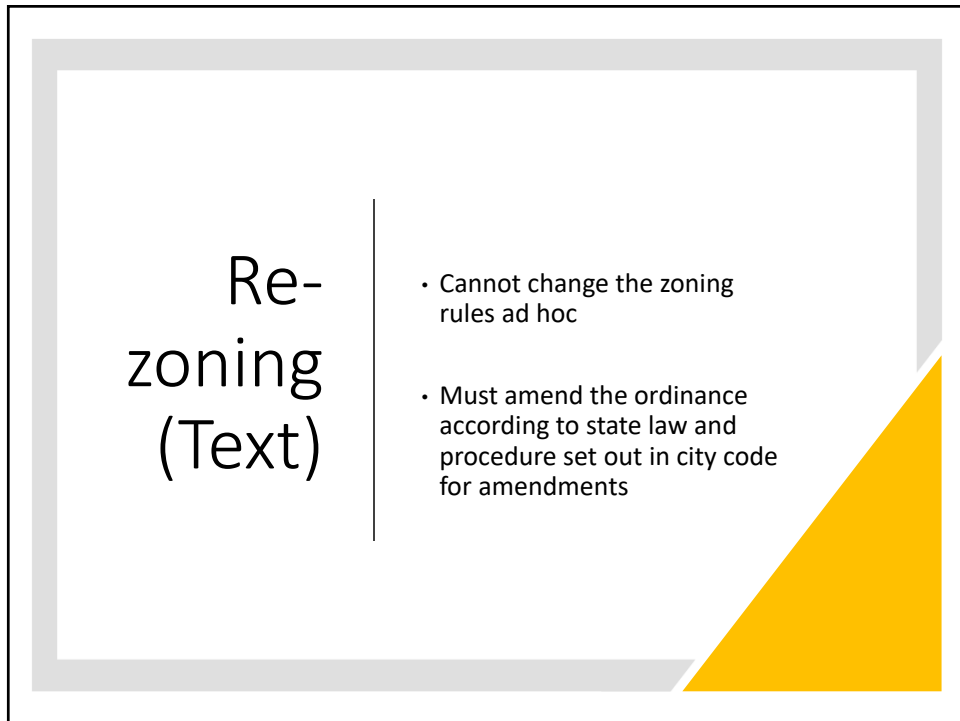
- In order to approve a Zoning Ordinance Amendment Application:
 - Must comply with Comprehensive Plan
 - Must not impede orderly development
 - Must not endanger, injure, detrimentally impact surrounding properties



Re-zoning (Map)

- Greater burden on applicant than on government to change zoning
- Relationship to comprehensive plan
 - Cannot allow “spot” zoning
- Rezoning Residential to Commercial or Industrial requires 2/3 vote

The slide features a white background with a grey border. A yellow triangle is located in the bottom right corner. The text is centered on the left side, and the bullet points are on the right side, separated by a vertical line.



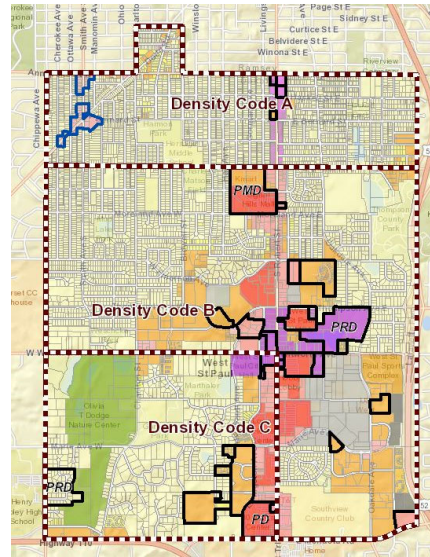
Re-zoning (Text)

- Cannot change the zoning rules ad hoc
- Must amend the ordinance according to state law and procedure set out in city code for amendments

The slide features a white background with a grey border. A yellow triangle is located in the bottom right corner. The text is centered on the left side, and the bullet points are on the right side, separated by a vertical line.

Rezoning (text)

- Application to add a Banquet Hall to the Shopping Center District. (shown in red)
- Allowing a new use in the Shopping Center District to accommodate a single applicant for one shopping mall impacts every shopping center district



Comprehensive
Plan
Amendment

General Rule:

Comprehensive Plan is the guiding document for the City. The Planning Commission must prepare, review and recommend amendments to the Comprehensive Plan.

Comp. Plan

- Projects with conflicting Zoning/Comp Plan maps must be reconciled
 - Fix Zoning map
 - Fix Comp. Plan map
- Can deny a project if the applicant has an application with inconsistent maps



Case Study – Mendota Golf





Mendota Golf

- Private Golf Course
- Guided in the Comp. Plan as Residential
- Zoned on the Zoning Map as Parks & Open Space
- Developer requested a Zoning Ord. Amendment
- City Denied
- Developer Appealed

What should Court decide?

Comprehensive
Plan Amendment

*Zoning Map and
Comprehensive Plan
Map must be consistent.*



Mendota Golf

- City must amend the Zoning Ordinance to be consistent with the Comp. Plan
- Or City must amend the Comp. Plan
- The two maps must be compatible.
- The City chose this option instead...



Mendota Golf

Case Study - Variance



Case Study - Variance

- Requesting a garage in the front yard.
- 7 ft between the west property line and the house (not enough to fit a regular-sized vehicle through).





Case Study - Variance

- Why can't they use the alley to the north?
- Unbuilt 16 ft alley from 1886 has been long overtaken by everything and anything and will not be built

Yes or No

Pros

- Reasonable use
- *Unique circumstances not created by landowner*
- Will not detrimentally impact the neighborhood because it is replacing the existing driveway with a garage

Cons

- Reasonable use
- *Unique circumstances not created by landowner*
 - Not unique to the property - other properties on the same block have similar facts
- It will create visual obstruction with a garage that close to the street blocking sight lines
- It will be too much mass of buildings in a cluster at the front of the lot

Site Plan Approval – Industrial Addition

- ▶ Site Plan approval for warehouse addition to automotive business in Industrial district adjacent to single family neighborhood.
- ▶ Building & proposed addition meet zoning code standards for use, setbacks, height, parking, landscaping, lighting, trash enclosure, etc.
- ▶ Noise ordinance: Dozens of complaints every year since business opened 5 years ago; machine inside building is very loud for brief periods – when police arrive, no noise is heard.



Site Plan Approval – Industrial Addition

- ❖ Numerous neighbors testified to occasional very loud machine noise at all hours
- ❖ Noise source is inside existing building



Should they approve the site plan?



Approve/Deny



With Conditions and if so what?

Variance Case – New 2-Car Garage

645 9th Ave N



= buildable area for house / additions = buildable area for accessory bldgs. = garage addition

Variance Case – New 2-Car Garage

Single family home and attached 1-car garage

Single width driveway to 9th Avenue (front); alley access in rear of lot

Convert garage to living space & add new 2-car garage

New garage would encroach in front setback

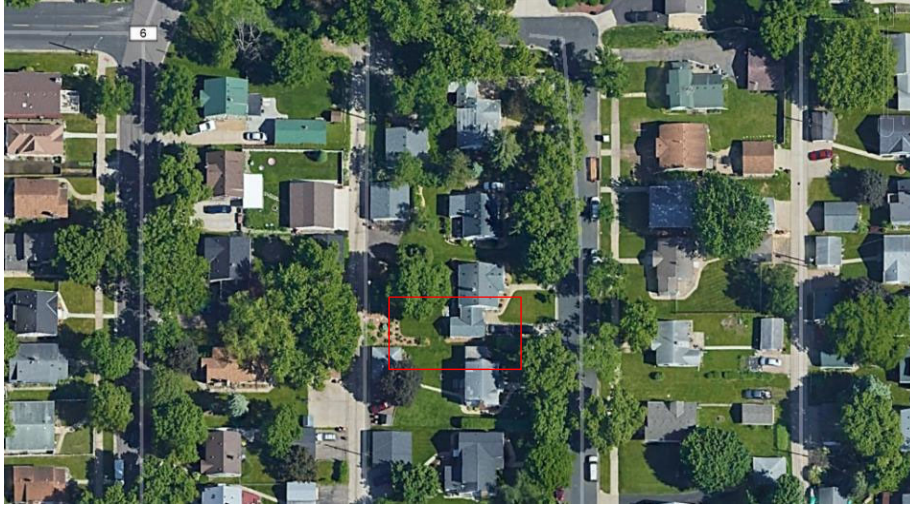
It is possible to build a garage in the rear accessing the alley without a variance

However, the owners would like to keep the back yard area intact

Variance Case – New 2-Car Garage

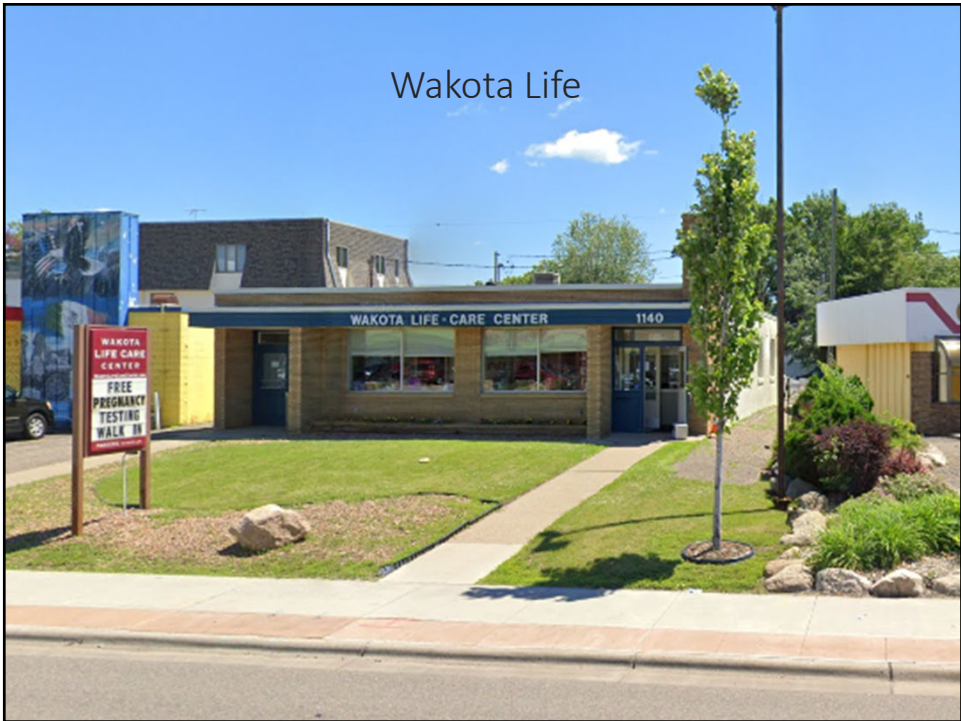
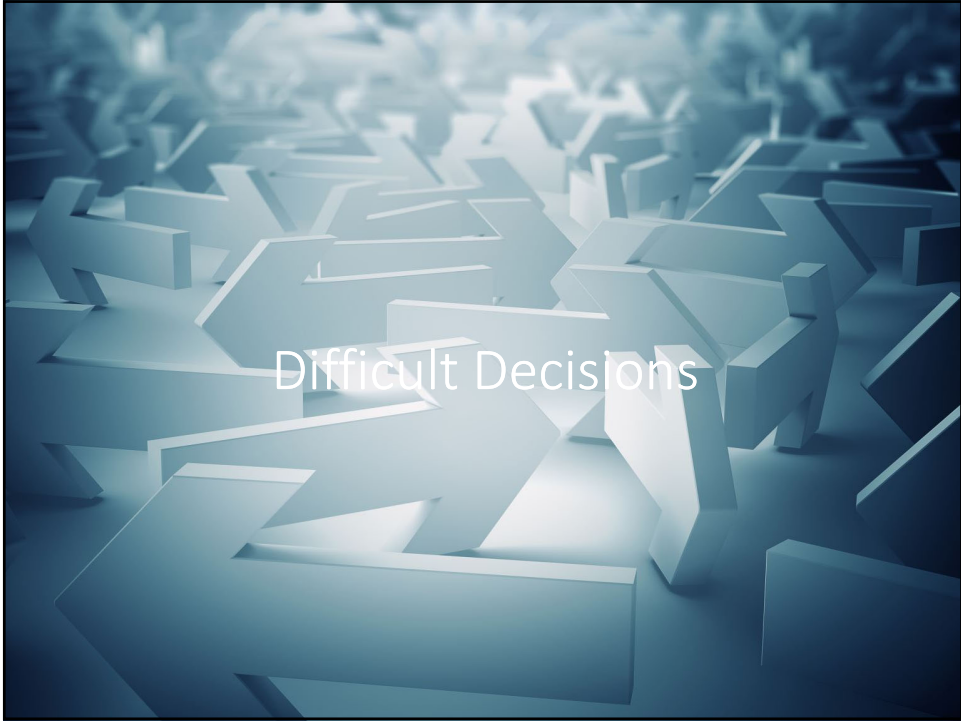


Variance Case – New 2-Car Garage



Variance Case – New 2-Car Garage





Wakota Life

Site Plan application for demolition of existing building and construction of new larger building

CUP for medical use

Plat to combine 2 lots

All applications were compliant with the ordinances.



Wakota Life

This Non-profit corporation was founded in 1976 and operates a pro-life clinic that provides pre-natal medical services and counseling to expectant mothers. They have existed in the same location for over 40 years.



Wakota Life

At the PC, the Council Chambers was full of people who expressed opposition to the project stating that the City should not be promoting or supporting an anti-abortion organization.

Wakota Life

PC recommended denial of the CUP because they did not believe it was a "medical use"

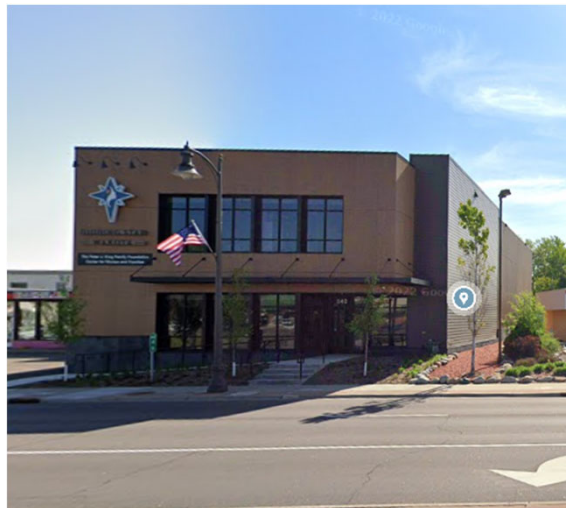
PC recommended approval of the Site Plan and Plat

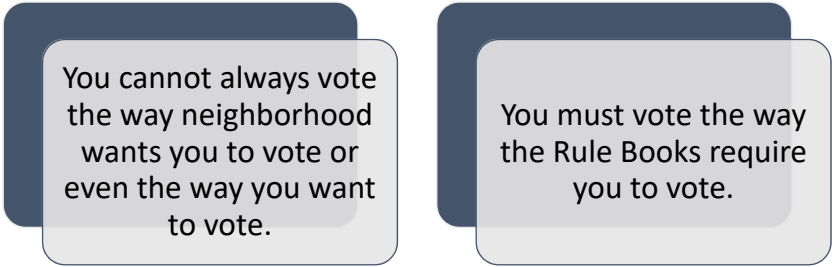
Wakota Life

At the Council meeting, 4 of the 7 Council members voiced their conflicts:

- 1 said they accepted campaign contributions from pro-abortion organizations
- 1 said they had communications with one of the directors of the organization that became verbally hostile
- 2 said they could not be fair or impartial

The 4 of them removed themselves from the meeting stating they had a conflict of interest.





You cannot always vote the way neighborhood wants you to vote or even the way you want to vote.

You must vote the way the Rule Books require you to vote.

CONTACT INFORMATION



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