

800 BOARD OF ADJUSTMENT

801 ESTABLISHMENT AND MEMBERSHIP

The Board of Adjustment is hereby established and vested with such authority as in hereinafter provided and as provided by Minnesota Statutes, Chapter 462. The board of Adjustment shall consist of the members of the Planning Commission.

802 TERMS OF OFFICE

Refer to Section 702.

803 DUTIES AND RESPONSIBILITIES

The Board of Adjustment:

- A. Shall hear and decide appeals and make interpretations of:
 - 1. City Ordinances or zoning maps
 - 2. Alleged errors in any order, requirements, decision, or determination made by the Administrator in the administration or enforcement of City Ordinances.

In exercising such power, the Board of Adjustment may affirm wholly or partially, or may modify the order, requirements, decision or determination and may direct the issuance of a permit.

- B. May authorize, upon appeal in specific cases, a variance from the terms of the Ordinance in keeping the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance shall create undue hardship.
- C. Shall hear and decide upon matters referred to it by the Administrator upon which it is required to pass under the Ordinance.
- D. Shall adopt rules necessary to the conduct of its affairs.

804 VARIANCES

804.1 Application and Notices

A landowner or a person with interest in a property may make an application to the PAC/BOA for a variance from the literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration and where the hardship is not solely economic. A permit application for the intended use must accompany the variance application. If the variance is denied, the permit fee will be refunded.

Written notice of time, place and purpose of the public hearing shall be published in the official newspaper designated by the Board and sent to owners of record within 350 feet of the affected property at least ten (10) days prior to the date upon which the application will be considered. This distance shall be extended to insure that a minimum of ten (10) property owners are so notified.

804.2 Variance Criteria

A variance may not circumvent the general purposes and intent of this Ordinance. In no case shall a variance be granted which the board determines will:

- A. Allow any use that is prohibited in the zoning district in which the subject property is located, or;
- B. Restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties, or;
- C. Result in incompatible land uses that would be detrimental to the protection of ground and surface water quality, or;
- D. Not be in keeping with the land use and/or planning objectives of the City of Chickamaw Beach or which will increase or cause danger to life or property, or;
- E. Be inconsistent with the preservation of natural land forms, vegetation or wetlands of the City, or;
- F. Result from the circumstances created by the landowner, or;
- G. Not change from a previously denied application.

804.3 Findings of Fact

In ruling on a variance request, the Board of Adjustment must make written findings of fact upon the following considerations and Minnesota Statutes, Chapter 462:

- A. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls.
- B. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- C. The variance, if granted, will not alter the essential character of the locality.
- D. The need for the variance is not justified by economic considerations alone.
- E. There is a complying individual sewage treatment system present for the intended use of the property.

804.4 Records

All written reports and recommendations to the Board of Adjustment shall be made a part of the permanent written record of the Board's meeting. When a variance is approved after the Department of Natural Resources has formally recommended denial in the hearing record, the notification of the approved variance required in section 504 shall also include the Board of Adjustment's summary of the public record and testimony and the findings of fact and conclusions which supported the issuance of the variance.

804.5 Conditions

Conditions, as deemed appropriate by the Board of Adjustment, may be attached to enforce the general purpose and intent of this Ordinance including but not limited to performance bonds as indicated in section

503 of this Ordinance, shoreline buffers as prescribed in section 2100 of this Ordinance, or individual sewage treatment system upgrade.

804.6 Appeal of Decisions

The decision of the Board of Adjustment shall not be final. Any person having an interest affected by this Ordinance or any decision made relating to it shall have the right to appeal to the City Council within thirty (30) days of the decision of the Board. Decisions of the City Council regarding variances may be appealed to District Court.

804.7 Lapse of Variance

A variance must be used within one year of the date the variance appeal period expires.