

Zoning Code

Chapter 8

Permits, Applications and General Regulations

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Article 1. General Conditions

Sec. 8-010. Site Plan Approval.

Application for site plan approval for construction of new building or structure other than single and double family residences shall be accompanied by site and landscape plans and building renderings. The plans are not required for remodeling that does not increase the exterior size of a building or structure.

The plans shall be referred to the City Council except that the plans shall not be referred to the Planning Commission for any site or landscape plan that does not conform to the requirements of this Section.

(1) A plot or site plan shall include:

- A. Complete details of the proposed site development including but not limited to location of buildings, driveways, parking spaces, dimensions of the parking spaces, dimensions of the lot, lot area, yard dimensions, waste disposal, water supply, ingress, egress, designation of fire lanes, fire hydrants, emergency access and sprinkler connections.
- B. Complete plans for proposed sidewalks to service parking, recreation and service areas within the proposed development.
- C. Complete plans for proposed storm water drainage system sufficient to drain and dispose of all surface water accumulations within the area. A complete topographic map of existing and proposed grade and contours at two-foot intervals of the proposed site. The map may be included on the plot plan, landscape plan, or as a separate sheet.
- D. Complete plans and locations for signs as permitted in Chapter 9 of the Zoning Code.
- E. Plans and location of exterior refuse storage in accordance with Chapter 11 of the City Code.
- F. Complete plans for exterior lighting of the building and site, including detailed plans of the fixtures, locations, orientation and plans for directing the light in such a way as to prevent direct light from being detectable at the lot line of the site on which the light source is located.
- G. Any additional data requested by the City.

(2) Landscaping

- A. Purpose and Goals: The City recognizes the various aesthetic, economic, and environmental benefits of a well landscaped environment. The goal of this ordinance is to address as many of the following goals as is appropriate and possible, depending on the specific characteristics of an individual site:
 - 1. Protect the health, safety, and general welfare of the city.
 - 2. Deter crime.

3. Promote reestablishment of the vegetative environment for aesthetic, health, and wildlife reasons.
 4. Improve ground water quality and water conservation.
 5. Reduce storm water runoff.
 6. Promote compatibility between land uses.
 7. Aid in energy conservation.
 8. Safeguard and enhance property values.
 9. Minimize large expanses of paved area.
 10. Provide shade.
 11. Preservation of existing vegetation and tree canopy where appropriate.
 12. Encourage use of a variety of deciduous, coniferous, and ornamental trees, shrubs, flowers, and groundcovers.
 13. Promote year-round ornamental/visual interest.
 14. Promote the minimization of environmental impacts through promotion of natural systems and use of low-maintenance native plants .
 15. Ensure longevity and practicality of the landscaped environment.
- B. Requirement of a Landscape Plan: With the exception of single and double family residences, the requirements of this section shall apply for all new developments, any redevelopment that includes an expansion in excess of 15% of the existing gross floor area, or an expansion of a parking area by 20 stalls or more. The plan, at a minimum, shall depict the following:
1. Boundary lines and dimensions of the property.
 2. Locations of existing and proposed buildings, parking lots, roads, and other improvements.
 3. Planting schedule containing symbols, quantities, common and botanical names, size of plant materials, and root condition.
 4. Planting details depicting proposed locations of all proposed plant materials.
 5. Locations and details of other landscaping features such as berms, walls, fences, sculpture, planters, etc.
 6. Details on restoration of disturbed areas with regard to being seeded or sodded.
 7. Irrigation system details if applicable.
 8. All storm water management plan structures and facilities including, but not limited to, infiltration BMP's, permanent sedimentation and water quality ponds, detention basins, and any associated storm drain pipes as required by the City or Rice Creek Watershed District.
- C. Minimum Landscaping Requirements for New Developments:
1. A minimum of one canopy tree per lot shall be planted within the boulevard area. In situations where there is only one lot, one deciduous tree and one coniferous tree shall be required in the boulevard area.
 2. One canopy tree for every 1,000 square feet of building floor area or one canopy tree per 50 feet of site perimeter, whichever is greater.
 3. Up to 25% of the required number of canopy trees may be substituted with ornamental trees at a ratio of two ornamental trees to one canopy tree.
 4. The makeup of all canopy trees must be at least one-half deciduous and one-half coniferous. In the event there are an odd number of trees required, the applicant may choose either deciduous or coniferous to make up the difference.
 5. Not more than 30% of the required number of trees shall be composed of a single species.
 6. Preservation of an existing tree shall be credited towards 2 new trees with the greatest credit not to exceed 25% of the total required number of trees.

7. One shrub shall be provided for each 300 square feet of building area or every 30 feet of site perimeter, whichever is greater.
 8. At least 10% of the total site area shall be landscaped.
 9. Surface parking lots of 100 stalls or greater shall include one raised island for every 25 parking stalls, with the island being at least 150 SF in area and containing at least one canopy tree.
 10. All existing dead or diseased plant materials shall be removed.
 11. Heightened screening shall be implemented on commercial or industrially zoned properties when an adjacent use is residential. Heightened screening shall consist of a berm, fence, or wall, or combination thereof so as to prohibit eye-level vision.
 12. Special consideration for drought-tolerant plant species shall be implemented in areas not irrigated.
- D. Minimum Landscaping Requirements for Expansions:
1. One canopy tree for every 1,000 square feet of expanded building floor area.
 2. Up to 25% of the required number of canopy trees may be substituted with ornamental trees at a ratio of two ornamental trees to one canopy tree.
 3. The makeup of all canopy trees must be at least one-half deciduous and one-half coniferous. In the event there are an odd number of trees required, the applicant may choose either deciduous or coniferous to make up the difference.
 4. Not more than 30% of the required number of trees shall be composed of a single species.
 5. One shrub shall be provided for each 300 square feet of added building floor area.
 6. Surface parking lot expansions of 50 stalls or greater shall include one raised island for every 50 stalls, with the island being at least 150 SF in area and containing at least one canopy tree.
 7. Heightened screening shall be implemented to the greatest practical extent on commercial or industrially zoned properties when an adjacent use is residential. Heightened screening shall consist of a berm, fence, or wall, or combination thereof so as to prohibit eye-level vision.
 8. Special consideration for drought-tolerant plant species shall be implemented in areas not irrigated.
- E. Minimum Size Requirements:
1. Canopy trees: 3 inch caliper
 2. Ornamental tree: 1.5 inch caliper
 3. Evergreen tree: 6 foot height
 4. Shrubbery: 5 gallon pot
- F. Completion and Maintenance Requirements:
1. All landscaping must be completed in advance of issuance of a Certificate of Occupancy or final inspection, whichever is applicable. In the event occupancy is requested prior to completion of the landscaping requirements, a Letter of Credit equal to 100% of the total cost to complete the landscape plan must be submitted to the City. When occupancy of a building does not apply to a project, all required landscaping shall be completed within one year of the date of construction commencement.
 2. Continued maintenance of all required landscaping is a requirement of this section. Plantings shall be maintained in a neat and healthy condition. Plantings which have died shall be replaced in accordance with the approved landscape plan on file with the City.
- G. Alternative Landscaping Options: The City encourages the use of special design features such as xeriscaping (low water requirements), rain gardens, bioswales, roof top gardens, native landscapes, and integrated pedestrian facilities. To encourage the use of these special design

features the City acknowledges flexibility may be necessary depending on specific site circumstances/characteristics. The Planning Commission and City Council may consider alternatives to the requirements of paragraphs C or D of this section when a narrative accompanies the required landscaping plan outlining how the landscaping plan meets the goals outlined in paragraph A of this section. The alternative design shall be allowed at the discretion of the City Council, with a recommendation by the Planning Commission, only if it is determined the stated goals are adequately accomplished

(3) Complete building plans shall include the following:

- A. Complete plans and specifications for exterior wall finishes and surfaces proposed for all principal and accessory buildings.
- B. Complete data as to dwelling units, sizes and ratios of dwelling units to total lot space.
- C. Any additional data requested on forms furnished by the City.

(4) The plans shall extend a minimum of 100 feet beyond the property line or to the center line of any abutting public street and shall show the location, elevation, right-of-way width and pavement width and names of all existing or platted streets and other public ways, public easements and public buildings.

(5) All building construction plans submitted for construction, other than single and two family residences shall be designed and certified by a registered architect and appropriate engineer. The site plans may be prepared by a professional site planner, but a registered architect or engineer shall certify to personally viewing the site and designing the proposed building in accordance with the Building Code as adopted and amended by the City.

(6) A current certificate of survey must be presented with all required plans.

(7) A performance bond shall be filed with the City in an amount equal to 100 percent of the estimated cost to complete the plot and landscape plan exclusive of structures if the building is to be occupied prior to completion of landscaping.

(8) Nothing in the foregoing shall preclude the inclusion of plot and landscaping plans as one document. (Ord. No. 515, 12-28-82; Code of 2001, Ord No 805, 10-25-2011)

Sec. 8-020. Appearance of Unused Land.

In all districts, the lot area remaining after providing for off-street parking, sidewalks, driveways, building sites and other requirements, shall be planted and maintained in grass, sodding, shrubs or other acceptable vegetation or treatment generally used in landscaping. All landscaped areas as shown on the approved site or landscape plan shall be maintained. Dead plants and ground cover that are required by approved plans shall be replaced within three months of notification by the City; however, the time for compliance may be extended to nine months in order to allow for varying temperature and weather conditions. (Code of 2001)

Sec. 8-030. Building Permit Approval.

No building permits for the construction or enlargement of a structure other than a single or two family residence shall be issued until the City Council has determined that all the applicable ordinances have been complied with and by majority vote has authorized the issuance of such permit. (Code of 2001)

Sec. 8-040. Time Limit.

(1) Site plan approval by the City Council for the construction or enlargement of a structure other than a single or two family residence, when not used, shall expire after 180 days after the date of City Council authorization as required by Section 8-030 unless written application for renewal or time extension is received and granted by the City Council prior to the expiration date.

(2) For purpose of this Section, site plan approval is considered used when the building permit has been issued by the City. (Ord. No. 515, 12-28-82; Code of 2001)

Sec. 8-050. Site Plan Approval Fee.

The fee for processing a site plan approval shall be established by resolution. (Ord. No. 515, 12-28-82; Code of 2001)

Sec. 8-051. Transition Zoning in Two Districts.

Where a district boundary line as established in the Zoning Code or as shown on the zoning map divides an unplatted lot or unplatted parcel of land that was in single ownership and of record on August 13,1974, the use thereon and the other district requirements applying to the least restricted portion of such lot under the Zoning Code shall be considered as extending to the entire lot, if the more restricted portion of such lot is entirely within fifty feet of subdividing district boundary lines. The use then extended shall be deemed to be conforming. (Previously was Section 8-490; Code of 2001)

Sec. 8-052. Essential Services.

Essential services shall be permitted as authorized and regulated by state law and the City Code, it being the intention that such are exempt from the application of this Chapter. (Previously was Section 8-510; Code of 2001)

Sec. 8-053. Unsafe Structures.

Nothing in this Chapter shall prevent the temporary strengthening or restoring to a safe condition any portion of a building or structure declared unsafe by the City. (Previously was Section 8-520; Code of 2001)

Sec. 8-054. Approval by City Council.

All plans for the improvement, development, alteration or expanded use of any property situated in any district other than the R-1 and R-2 districts shall be examined and approved by the City Council prior to the issuance of any permit whatsoever. (Previously was Section 8-610; Code of 2001)

Sec. 8-055. Public Hearing.

(1) Public hearings held to consider the rezoning of any property shall be in strict accordance with the provisions of Section 8-320.

(2) All other public hearings referred to in this Chapter shall be held by the Planning Commission after

notice of the time and place of such hearing has been published in the official newspaper at least ten days before the hearing. The Planning Commission shall cause notice to be mailed to each property owner within 350 feet of the property under consideration at the hearing, and such notice shall be mailed to the last known address of the owners at least ten days before the hearing.

(3) In all cases, except those which include only a building permit application, the City Council may act upon a majority vote of the City Council. All public hearings held by the Planning Commission prior to City Council action in any matter shall conform with the procedure set forth in this Section. (Ord. No. 518, 1-24-84; Previously was Section 8-620; Code of 2001; Ord. 861, 5-8-2018)

Sec. 8-056. Building Relocation.

(1) Each relocation of a building shall require a special permit from the City Council. All such buildings shall be situated in a properly zoned area in accordance with all of the provisions of this Chapter and the Building Code.

(2) Application for a permit to move a building shall be accompanied by an abstractor's certificate of property ownership within 200 feet of the boundary lines of the lot upon which said building is to be located. The application must also be accompanied by a written approval of at least fifty percent of the property owners within the 200 feet of said lot.

(3) The application for a permit to move a building may be granted or denied by the City Council after a public hearing. (Previously was Section 8-630; Code of 2001)

Sec. 8-057. Topsoil Removed.

No person, firm or corporation shall strip, excavate or otherwise remove topsoil for sale, or for use other than on the premises from which the same shall be taken, except in connection with the construction or alteration of a building on said premises and excavation or grading incidental thereto or by special permit in accordance with Section 4-030(3). (Previously was Section 8-640; Code of 2001)

Sec. 8-058. Vision Obstructed.

On any corner lot no wall, fence, or other structure or vehicle shall be erected or altered and no hedge, tree, shrub or other growth shall be maintained that may cause danger to traffic on a street or public way by obscuring the view. (Previously was Section 8-650; Code of 2001)

Sec. 8-059. Conformance with Street Plan.

No building permit shall be issued and no structure shall be placed in such a way as to interfere with the future construction of streets or roads as shown on the City's street plan as such plan exists or is amended in the future. (Previously was Section 8-660; Code of 2001)

Sec. 8-060. Front Lot Line and Lots with Multiple Street Sides.

(1) The front line of lots having more than one street side shall be considered to be that street side of the lot toward which the principal structure is oriented. The orientation of the principal structure shall be

determined by the administrative authority with reference to the following design elements of the structure:

- A. Location of the structure's primary entrances.
- B. Location of display windows and other windows of the structure.
- C. Location of the longest side of the structure.

(2) In cases where the orientation of the principal structure is not clear after a review of the design elements cited in Section 8-060 (1), the final determination of the front line of the lot or building site shall be made by the City Council.

(3) Any property other than property zoned R-1 and R-2 that is already improved on June 26, 1975, by construction of a principal structure shall continue to have its front line be as it was prior to June 26, 1975; except that the property owner may request and the City Council may allow the front line to be changed in order to better accomplish the purposes of this Chapter. Any property zoned R-1 and R-2 that is already improved on August 21, 1981, by construction of a principal structure shall continue to have its front line be as it was prior to August 21, 1981.

(4) Any property that shall subsequently be improved by construction of a principal building shall have its front line determined as in Section 8-060 (1), and the front line of such property shall thereafter remain as first determined; except that the property owner may request and the City Council may allow the front line to be changed in order to better accomplish the purposes of this Chapter. (Previously was Section 8-670; Code of 2001)

Sec. 8-061. Determination of Permitted Use.

The provisions of this Code listing permitted uses cannot reasonably include all possible uses of the same or similar nature and character. To limit permitted uses to those which are specifically set forth in the Code would be unduly restrictive, and to require an amendment to the Code to allow uses which are essentially the same as those listed in their impact on the community would be unnecessarily burdensome. However, to serve the purposes of the Zoning Code and protect the public health, safety and welfare and general convenience of the community, the Code must be so interpreted, enforced, and administrated as to assure compatible and complimentary land uses. The procedures and criteria set forth in Sections 8-061 through 8-063, therefore, are enacted to meet these objectives. (Ord. No. 587, 11-10-92; Previously was Section 8-700; Code of 2001)

Sec. 8-062. Procedure for Determining Permitted Use.

(1) The procedure and voting requirements for determining whether a proposed use is permitted pursuant to Sections 5-010 (4), 5-120 (2) G, 5-220 (1), 5-340 (1) C and 5-420 (2) shall be the same as that specified for consideration of special use permits in section 8-120.

(2) The determination of the City Council shall be set forth in a resolution which includes findings addressing the criteria set forth in Section 8-063. The resolution shall specify and describe the proposed use in whatever detail is deemed necessary by the City Council to define the nature and characteristics of the use to which the findings relate. No change, alteration, extension or expansion of the use described in the resolution may be made without first securing from the City Council a new determination in accordance with Sections 8-061 through 8-063. (Ord. No. 587, 11-10-92; Previously was Section 8-710; Code of 2001)

Sec. 8-063. Criteria for Determining Permitted Use.

(1) The City Council shall not approve a proposed use as a permitted use unless it finds that all of the following criteria are met:

- A. The proposed use is consistent with the City's comprehensive plan.
- B. The proposed use is not listed as a special use in the district.
- C. The proposed use meets the criteria set forth in Section 8-130.
- D. The proposed use is not a residential use.
- E. The proposed use is suitable for any property in the district.
- F. The proposed use is consistent with any general description in the code of the nature of uses for which the district is intended.
- G. The proposed use is compatible with and complimentary to other permitted uses in the district.
- H. The proposed use is so similar in its nature and characteristics with respect to general zoning purposes that it is deemed in all practical respects to be the same as a listed permitted use.
- I. The proposed use will not have a detrimental effect on the economic viability of other permitted uses in the district.

(2) In making its determination the City Council shall consider, among other factors, the similarity of the proposed use to listed permitted uses with respect to: the creation of dust, noise, glare, litter, vibrations, fumes and odors; hours of operation; visual and aesthetic compatibility; services and goods provided or sold; the community served by the proposed use; the generation of traffic; outside storage or activities; maintaining continuity and compatibility of uses in the district; and the need for police, fire or other public services. (Ord. No. 587, 11-10-92; Previously was Section 8-720; Code of 2001)

Article 2. Special Use Permit and Variance

Sec. 8-110. Special Uses and Special Use Permits.

Special uses as shown in specified districts of this Chapter may be permitted in those districts by the City Council where such uses are deemed essential or desirable to the public convenience and welfare, and are in harmony with the various elements or objectives of the comprehensive plan, and if their location, plan, and character of the development are first considered by the Planning Commission following the procedure set forth in this Chapter.

In the exercise of its approval, the City Council may impose such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in the furtherance of the purposes of the Zoning Code. (Code of 2001)

Sec. 8-120. Procedure.

An application for a special use permit shall be referred by the proper City official to the Planning Commission for consideration at a public hearing following publication as prescribed in Section 8-055 and recommendation to the City Council. The Planning Commission shall report to the City Council within forty days after receiving the application at a regular meeting. The City Council shall consider the application within 45 days after receipt of the application by the Planning Commission and with or without a recommendation from the Planning Commission. The City Council may grant application for a special use permit by a majority vote of the City Council. The fee for processing a special use permit shall be established by resolution. (Ord. No. 539, 2-25-86; Code of 2001; Ord. 861, 5-8-2018)

Sec. 8-130. Special Use Standards.

No special use shall be recommended by the Planning Commission unless it shall find:

- (1) That the establishment, maintenance, or operations of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- (2) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
- (3) That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (4) That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
- (5) That the special use shall in all other respects conform to the applicable regulations of the district in which it is located. (Code of 2001)

Sec. 8-140 through 8 – 200. Reserved.

Sec. 8-210. Variance.

The City Council shall have the power to grant variances from the literal provisions of the City’s Zoning Code as authorized by Minnesota Statutes, Section 462.357, Subd. 6, as may be amended. The variance process is intended to provide limited relief from the strict requirements of the Zoning Code in cases where strict application of a particular requirement will create practical difficulties due to circumstances unique to the individual property under consideration. It is not intended that variances be granted to allow a use not permitted by the underlying zoning district, nor to merely remove inconveniences or financial burdens that the requirements of the Zoning Code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant’s act or omission. (Ordinance No 796, 01-11-2011; Ord. No. 863, 11-13-2018)

Sec. 8-220. Application.

All applications for a variance shall include:

- (1) A completed City of New Brighton application form;
- (2) Verification of authority to file the application (i.e. proof of ownership or control of the property; if not the owner of the property, the signature of the fee owner of the property);
- (3) A written narrative demonstrating that the criteria for a variance as set out in Section 8-230(1) have been met;
- (4) An up-to-date survey of the property showing all information necessary to allow the City to determine conformance with all zoning provisions, and to calculate the specific variance(s) being requested. Information shall include but not be limited to:
 - A. Property and structure dimensions;
 - B. Setback dimensions/measurements; and
 - C. Parking and access locations and dimensions;
- (5) Electronic copies of all documents required by the specific application;
- (6) Applicable fee; and
- (7) Any other information deemed necessary by the City in order to review the application.

(Ord. No. 539, 2-25-86; Code of 2001; Ord. 861, 5-8-2018; Ord. No. 863, 11-13-2018)

Sec. 8-230. Review

- (1) **Variance Criteria.** Approval of a variance requires that the City find that all of the following criteria are satisfied, as they may be modified from time to time by statute or interpretative court decisions:
 - A. The request is in harmony with the general purposes and intent of the Zoning Code;
 - B. The variance is consistent with the City’s comprehensive plan;
 - C. The applicant can establish there are “practical difficulties” in complying with the Zoning Code based on the following:
 1. The applicant proposes to use the property in a reasonable manner not permitted by the Zoning Code;

2. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
3. A variance, if granted, will not alter the essential character of the locality.

(2) **Practical Difficulties and Variance Guidelines.**

- A. Economic considerations alone shall not constitute a sufficient basis for granting a variance if reasonable use for the property exists under the terms of the ordinance.
- B. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- C. Variances shall be granted for earth sheltered construction, as defined by State Statute, when in harmony with the ordinance.
- D. A variance to permit a use that is not otherwise allowed by this ordinance is prohibited.
- E. Variances may be granted to permit the temporary use of a one-family dwelling as a two-family dwelling.

(3) **Planning Commission.**

- A. Before any variance is considered by the City Council acting as the Board of Adjustments and Appeals, the Planning Commission shall hold at least one public hearing after proper notice has been issued in accordance with Section 8-055.
- B. Following the hearing, the Planning Commission will be asked to discuss the facts of the case and adopt findings and recommendations on the proposed variance for consideration by the City Council.
- C. Applications may be forwarded to the City Council without a recommendation from the Planning Commission if it is deemed necessary to ensure compliance with state mandated deadlines for application review.

(4) **City Council.**

- A. The City Council shall consider the applicant's submittals, the Planning Commission's recommendation, City staff's recommendation, and the comments received at the public hearing against the variance review criteria outlined in Section 8-230(1), and take action on the request(s) as soon as practicable.
- B. Approval or denial of a variance shall require a majority vote of the City Council.
 1. In approving a variance, the City Council may impose conditions on the approval as deemed appropriate to ensure compliance with the approval and to protect adjacent properties. Any conditions must be directly related to and must bear a rough proportionality to the impact created by the variance.

2. Denial of any request shall be accompanied by findings of fact as to how the request did not meet one or more of the review criteria. (Ordinance No 796, 01-11-2011; Ord. No. 863, 11-13-2018)

Sec. 8-240. Effect of a Variance

- (1) The issuance of a variance shall authorize only the particular variation that is approved by the City Council.
- (2) A variance, including any conditions, shall run with the land and shall not be affected by a change in ownership. (Code of 2001; Ordinance No. 863, 11-13-2018)

Sec. 8-250. Subsequent Development

Development authorized by the Variance shall not be carried out until the applicant has secured all other approvals required by this zoning ordinance or any other applicable chapters or regulations. The granting of a variance does not constitute, imply, or guarantee the granting of any other such required approval (e.g.: a building permit). (Code of 2001; Ordinance No. 863, 11-13-2018)

Sec. 8-260. Time Limit

- (1) Unless otherwise specified in the variance, if a building permit has not been applied for within one year of the date of the variance approval, the variance shall become invalid. Permitted timeframes do not change with successive owners.
- (2) Upon written request, extensions of one year may, but need not, be granted by the City Council if the applicant can show good cause. (Code of 2001; Ordinance 863, 11-13-2018)

Sec. 8-270. Amendment

- (1) A variance may be amended, extended, or modified only in accordance with the procedures and standards established for originally securing the variance.
- (2) A request for a change in the conditions of approval of a variance shall be considered an amendment and subject to the full review procedure set forth in this Article.
- (3) An additional application fee may be required before consideration of the amendment request. (Ordinance No. 863, 11-13-2018)

Article 3. Rezoning

Sec. 8-310. Reserved.

Sec. 8-320. Rezoning by Petition.

(1) The Planning Commission shall, upon the petition of fifty percent or more by number of the property owners within 200 feet of the property to be rezoned, fix a date for a public hearing. The petition shall be accompanied by an abstractor's certificate showing the names of all property owners within 350 feet of the property to be rezoned. The fee for processing a rezoning shall be established by resolution.

(2) The Planning Commission shall hold at least one public hearing on any petition for rezoning after published notice of the time and place at least ten days before the hearing. The Planning Commission shall also cause a notice to be mailed to each property owner within 350 feet of the property for which rezoning is petitioned, such notices to be mailed to the last known addresses of the owners at least ten days before the hearing.

(3) The petitioner requesting rezoning shall erect, or cause to be erected, at least one sign per street frontage on the property described in the petition. The sign(s) shall be of a design approved by the City and shall be 36 inches by sixty inches in size, shall have letters at least four inches high using Helvetica medium type face or other letter style approved by the City and shall be constructed of sturdy material, shall be neatly lettered, and shall be in clear public view of persons on the adjoining street right-of-way. The sign shall contain the following information:

"This property proposed for rezoning
from _____ to _____ district."

"New Brighton Planning Commission to consider on
_____ (insert date of first meeting)."

"For information, contact the City at:
_____@

The sign shall be erected not less than ten days before the first hearing on the petition before the Planning Commission.

The sign(s) at all times shall be kept in good repair and shall be maintained in place until a final decision on the petition has been made by the City Council and shall be removed by the petitioner within five days after the final decision. The failure of any petition to comply fully with the provisions of this Section relating to the sign(s) shall not prevent the Planning Commission and City Council from acting on the petition nor invalidate any rezoning granted by the City Council.

(4) After hearing the petition, the City Council may, by ordinance, grant the petition by a majority vote of all its members. If the rezoning changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, a two-thirds majority vote of all members of the City Council is required. (Ord. No. 518, 1-24-84; Ord. No. 539, 2-25-86; Code of 2001; Ord. 861, 5-8-2018)

Sec. 8-330. Rezoning by Council Initiative.

(1) The City Council may, by ordinance, on its own initiative, change boundaries of a district or a use, height or area regulation of any district after a public hearing by the Planning Commission and upon a majority vote of all members of the City Council in the same manner as specified in Section 8-320 (2). If the rezoning changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, a two-thirds majority vote or all members of the City Council is required. (Ord. No. 518, 1-24-84; Code of 2001; Ord. 861, 5-8-2018)

Sec. 8-340. Failure to Receive Notice.

(1) Failure of the property owners to receive the notice shall not invalidate the proceedings.

(2) The City Council may take final action upon the application or it may continue the item from time to time for further investigation and hearing. The City Council may also request information and report from the Planning Commission. (Code of 2001)

Sec. 8-350. Planning Commission to Act.

(1) The City Council shall not rezone any land or area in any zoning district without such rezoning proposal having first been reviewed by the Planning Commission at a public hearing. (Code of 2001)

Article 4. Nonconforming Use

Sec. 8-410. Nonconforming Use.

(1) It is recognized that there are structures, uses of land, and combinations thereof that were lawfully established and that do not now comply with all applicable portions of the Zoning Code.

(2) While it is recognized that such nonconforming uses may not be summarily terminated, it is the purpose and intent of this Chapter to discourage their survival. Such uses are hereby declared to be incompatible with the Zoning Code. It is further the purpose and intent of this Chapter to discourage the enlargement, expansion of, extension of any nonconforming uses or any increase of the impact of such nonconforming uses on adjoining premises. The elimination of nonconformities and/or the reduction of their impact on adjacent premises shall be encouraged.

(3) It is further the purpose and intent to discourage the use of the provisions of this Chapter to expand structures beyond allowable zoning district density and floor area ratio requirements. The provisions of the Chapter shall not apply to signs. Signs shall be controlled by the provision of Chapter 9 of the Zoning Code. (Ord. No. 550, 8-11-87; Code of 2001)

(4) For purposes of this Article, “expansion” or “expanded” shall be defined as increasing the intensity of the use based upon the original nature, function, or purpose of the nonconforming use. This includes, but is not limited to increasing the use’s hours of operation, amount of traffic being generated, the amount of parking on the property, the amount of noise being generated, the amount of exterior storage on the property, exterior lighting, the number of types of operations on the property, the types of goods or services being offered on the property, the amount of odor being generated, the area of operation on the property, the number of employees, the size of the structures on the property, and other factors deemed relevant by the City. (Ordinance 852; 6-27-2017)

Sec. 8-420. Types of Nonconforming Uses.

There are four types of nonconforming uses. They are:

(1) **Type 1.** The nonconforming use of land that is vacant, or has no structure, or improvement or combination thereof with an assessor's market value over \$1,000.

(2) **Type 2.** Any use of a structure that is not a use permitted in the zoning district where located as provided for in Chapters 4, 5, and 6.

(3) **Type 3.** Any use of land not necessary or customarily incidental to the principal use of the structure located on such land where such use of land is not a use permitted in the zoning district where located as provided for in Chapters 4, 5, and 6.

(4) **Type 4.** Any structure or use of land not included in Type 1, Type 2 or Type 3. (Ord. No. 550, 8-11-87; Code of 2001)

Sec. 8-430. Regulations as to Type 1 Nonconformities.

(1) No such use shall be expanded or enlarged to use more land area.

- (2) No such use shall be moved to a different area within the parcel of land.
- (3) No such use shall be reestablished if the use has been discontinued for one or more months.
- (4) No structure or improvement shall be enlarged or replaced.
- (5) Type 1 nonconformities may continue for a period of twelve months from February 13, 1975, whereupon such nonconforming use shall cease. (Code of 2001)

Sec. 8-440. Regulations as to Type 2 Nonconformities.

- (1) No such structure shall be expanded, enlarged, replaced or located except in changing the use to a permitted use.
- (2) Any existing nonconforming use may be extended throughout any part of the structure which is manifestly arranged or designed for such use but no such use shall be extended to occupy any land outside such structure.
- (3) No such use shall be reestablished if the use has been discontinued for six or more months.
- (4) Removal or destruction of such structure shall terminate the right to continue any nonconforming use of the premises.
- (5) Any such use may be changed to another nonconforming use with permission of the City Council. The permission shall only be granted upon the City Council's finding that the proposed use is equally or more appropriate to the zoning district than the present use and that the impact of the nonconformity on adjacent premises will not be increased. The procedure (not conditions) shall be the same as that for a variance, Section 8-220. The fee for processing a nonconforming use shall be established by resolution. The City Council may require plans or other evidence regarding the present and proposed use.
- (6) Whenever any such use is superseded by a permitted use, the nonconforming status of the premises shall terminate. (Ord. No. 539, 2-25-86; Code of 2001)

Sec. 8-450. Regulations as to Type 3 Nonconformities.

The Type 3 nonconformities may continue for a period of twelve months from February 13, 1975, whereupon such nonconforming use shall cease. (Code of 2001)

Sec. 8-460. Regulations as to Type 4 Nonconformities.

- (1) Where Type 4 nonconformities are present and are proposed to continue, expansion of the existing structure or use, construction of new structures, or resumption of use after discontinuance of use for six or more months shall be allowed only upon permission of the City Council. The procedure (not conditions) shall be the same as that for a variance, Section 8-220. The fee for processing a nonconforming use shall be established by - resolution.
- (2) Such permission may be granted only if one or more of the following conditions are met:

- A. The total number of nonconformities is reduced.
- B. The impact of the expansion of any nonconformity upon adjacent premises is reduced to the greatest practical extent.
- C. The extent of any nonconformity is reduced where practical.

(3) The City Council may condition the granting of such permission to more effectively carry out the intent of the Zoning Code.

(4) Expansion of a Type 4 nonconformity shall meet the requirements of Section 8-460 (1) through (3) except that the conditions for a variance must also be present. For the purposes of this Chapter, such permission shall be called a nonconforming use variance.

(5) Removal or destruction of the principal structure shall terminate the right to continue any nonconforming use of the premises. (Ord. No. 539, 2-25-86; Code of 2001; Ord. 852, 6-27-2017)

Sec. 8-470. Eminent Domain.

Where the taking under eminent domain of a portion of the land upon which there existed a lawful use of the land or a structure thereon prior to such taking results in such use becoming unlawful under the Zoning Code, such use is a nonconforming use and may be continued under the provisions of this Chapter. (Code of 2001)

Sec. 8-480. Repairs and Maintenance.

Repair and maintenance work may be permitted by the City on buildings included in Type 2 and Type 4 Nonconformities so long as the cost does not exceed fifty percent of the current assessor's market value for such building and so long as such work does not involve repair or replacement of the foundation or bearing walls. Where the cost of such work exceeds fifty percent of the current assessor's market value, permission for such work must be obtained from the City Council pursuant to Section 8-460 in the case of a Type 4 Nonconformity, and the nonconforming status of the building shall terminate as to a Type 2 Nonconformity. (Code of 2001)

Sec. 8-500 thru 8-690 reserved 6/10/03.

Sec. 8-700. Permitted Use Determination, Purpose.

The provisions of this Code listing permitted uses cannot reasonably include all possible uses of the same or similar nature and character. To limit permitted uses to those which are specifically set forth in the code would be unduly restrictive, and to require an amendment to the code to allow uses which are essentially the same as those listed in their impact on the community would be unnecessarily burdensome. However, to serve the purposes of the zoning code and protect the public health, safety and welfare and general convenience of the community, the code must be so interpreted, enforced and administrated as to assure compatible and complimentary land uses. The procedures and criteria set forth in sections 8-700 through 8-720, therefore, are enacted to meet these objectives. (Ord. No. 587, 11/10/92 entered 6/10/03)

Sec. 8-710. Permitted Use Determination, Procedure.

The procedure and voting requirements for determining whether a proposed use is permitted pursuant to

sections 5-010(4), 5-120(G), 5-220(11),5-340(3) and 5-420(2) shall be the same as that specified for consideration of special use permits in section 8-120. The determination of the council shall be set forth in a resolution which includes findings addressing the criteria set forth in section 8-720. The resolution shall specify and describe the proposed use in whatever detail is deemed necessary by the council to define the nature and characteristics of the use to which the findings relate. No change, alteration, extension or expansion of the use described in the resolution may be made without first securing from the council a new determination in accordance with sections 8-700 through 8-720.
(Ord. No. 587, 11/10/92 entered 6/10/03)

Sec. 8-720. Permitted Use Determination, Criteria.

(1) The council shall not approve a proposed use as a permitted use unless it finds that all of the following criteria are met:

- A. The proposed use is consistent with the city=s comprehensive plan.
- B. The proposed use is not listed as a special use in the district.
- C. The proposed use meets the criteria set forth in section 8-130.
- D. The proposed use is not a residential use.
- E. The proposed use is suitable for any property in the district.
- F. The proposed use is consistent with any general description in the code of the nature of uses for which the district is intended.
- G. The proposed use is compatible with and complimentary to other permitted uses in the district.
- H. The proposed use is so similar in its nature and characteristics with respect to general zoning purposes that it is deemed in all practical respects to be the same as a listed permitted use.
- I. The proposed use will not have a detrimental effect on the economic viability of other permitted uses in the district.

(2) In making its determination the council shall consider, among other factors, the similarity of the proposed use to listed permitted uses with respect to: the creation of dust, noise, glare, litter, vibrations, fumes and odors; hours of operation; visual and aesthetic compatibility; services and goods provided or sold; the community served by the proposed use; the generation of traffic; outside storage or activities; maintaining continuity and compatibility of uses in the district; and the need for police, fire or other public services. (Ord. No. 587, 11/10/92 entered 6/10/03)