

# Article X: Administration, Enforcement, Variances and Review

## Section 1 General

- A. Planning Director.** The Planning Director will be hired by the Town Board.
- B. Planning Director's Responsibilities.** This Ordinance shall be administered by the Town of Duluth Planning Director who shall assist any applicant in preparing their application, advise the applicant as to the provisions of this Ordinance, and conduct an inspection program.
- C. Voiding of Permits Issued in Error.** Any permit issued based on an application that is in error, whether the error is intentional or not, shall be null and void. No such permit may be construed as permission to build or begin a land use. It shall be the responsibility of the Planning Director to notify the property owner upon discovery of an erroneous application.
- D. Administrative Determinations.** Administrative determinations are to be made by the Planning Director as questions arise. Should a question or problem arise concerning an approved Variance, Conditional Use Permit, Land Use Permit, or an existing use or structure, any person may request a review of the matter by the Planning Director. Such a request shall be in writing and shall detail the problem and location of the subject property, if applicable.
1. The Planning Director shall investigate the matter, report to the party making the request within a reasonable period, and take the appropriate action. The Planning Director shall also report his/her findings to the Planning Commission.
  2. Any person taking exception to the Planning Director's determination may appeal the determination by letter to the Board of Adjustment as specified in this Article, **Section 3-A, page 89.**
  3. Any person wishing to appeal the decision of the Board of Adjustment may appeal to District Court.
- E. Cooperation with Other Management Entities.** The Town of Duluth shall cooperate with other entities on management issues.
1. North Shore Management Board (NSMB). The Town of Duluth will cooperate with the North Shore Management Board in the following ways:
    - a. Copies of all adopted or amended ordinances regulating the use of land within the Lake Superior Management Area will be sent to the North Shore Management Board. The Lake Superior Management Area is defined as lying between Lake Superior and the Highway 61 Expressway.
    - b. Copies of all approved variances, conditional uses, new subdivisions plots and approved Planned Unit Developments will be sent to the North Shore Management Board.
  2. Duluth North Shore Sanitary District (DNSSD). The Planning Commission will continue to cooperate with the Duluth/North Shore Sanitary District in working with the D/NSSD to:
    - a. Help assure that growth and development are managed to remain within the capacities of the DNSSD.
    - b. Actively plan with the DNSSD in matters relating to water quality within the Town of Duluth.
  3. The DNR shall be notified a minimum of ten (10) days prior to public hearings relating to the following activity in Shoreland Districts: preliminary subdivision plats, rezoning, amendments to official controls, land use and other plans, conditional uses, administrative determinations, variances and other permits involving hearings before the Planning Commission or Town Board.

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## Section 2 Enforcement

- A. Investigations.** The Planning Director shall investigate all violations of this Ordinance, notify the owners of violations and direct the property owner to correct violations within a reasonable period, and, if compliance is not obtained within a reasonable period, shall report such violations to the Attorney, who shall take appropriate and immediate action on the matter.
1. Taxpayers within the Town may institute mandamus proceedings to compel specific performance by proper officials in reference to administration or enforcement of the Zoning Ordinance.
  2. The Town of Duluth may enforce all provisions of this Ordinance through such proceedings for injunctive relief as may be proper under the laws of Minnesota. The Town Board or any member thereof, upon notification from the Planning Director, may initiate action to prevent, restrain, correct or abate violations or threatened violations. The Town Board may at a later date vote to discontinue proceeding.
- B. Misdemeanor penalty.** The Town of Duluth sets financial penalties for misdemeanor violations of this ordinance, as described below.
1. Any person, firm or corporation, or agent, employees or contractors of such, who violate, disobey, omit, neglect, refuse to comply with, or who resist enforcement of any of the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined in an amount not to exceed the maximum permitted for misdemeanors under State statute together with the full costs of such prosecution, plus the costs of any compliance required to rectify the violation.
  2. Any person, and/or his/her authorized agent or contractor, proceeding with any action that requires a permit, without first securing such a permit, shall be subject to twice the fees for such a permit.
  3. All fines for violation shall be paid to the Town of Duluth and shall be credited to the General Revenue Fund.
- C. Refusal to Comply.** In the event that an applicant or their authorized representative violates, neglects or refuses to comply with the conditions, performance standards or dimensional requirements imposed upon the proposed or established use or structure as a condition of granting the permit for said use or structure, they shall be notified by the Planning Director in writing by mail or in person of those requirements that have not been complied with (for purposes of computation of time, notification is complete upon mailing), in which:
1. He/she shall have no more than thirty days from the date of the notification to satisfy said requirements or be subject to the revocation of said permit; or
  2. He/she shall have no more than thirty days from the date of the notification to make appeal to the appropriate body.
- D. Citations.** The Town of Duluth may issue citations for violations of this Ordinance.
1. Citations shall contain the following information.
    - a. The name and address of the person charged with a violation or the owner or person in charge of the premises at which the violation occurs.
    - b. The date and place of the violation.
    - c. A short description of the violation followed by the section of the Ordinance violated.
    - d. The date and place at which the person receiving the citation shall appear and a notice that if such person does not respond, a warrant may be issued for such person's arrest.
  2. The citation shall be issued to the person charged with the violation, or in the case of a corporation or unit of government, to any officer or agent authorized to accept such issuance. The citation shall be issued to the person charged pursuant to Minnesota Rules of Criminal Procedure.

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- E. Inspections.** All persons involved in land development activity shall allow free access to authorized representatives of the Town of Duluth at any reasonable time for making such inspections as may be necessary to determine compliance with the Official Controls of the Town of Duluth. Failure of such persons to allow an inspection shall be considered a violation of this Ordinance and the Planning

Director shall have the authority to take appropriate legal actions, to suspend review of a permit, or to revoke a permit.

### **Section 3      Variances**

- A. General.** The Town of Duluth requires the following general provisions and processes for pursuing variances:
1. Applications for variances from the terms of this Ordinance or appeals from any order, requirement, decision or determination made by the Planning Director shall be made to the Planning Commission.
  2. Such appeals may be made by any person aggrieved, or by any officer, department, board or bureau of a town, municipality, county or state.
  3. Such appeals shall be taken to the Planning Commission within forty-five (45) days of receipt of notice from the Planning Director of any order, requirement, decision, or determination made by him/her.
  4. An appeal stays all proceedings in furtherance of the action appealed from unless the Planning Commission certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.
- B. Application for a Variance.** Applications for variances shall meet the following requirements.
1. An application for a variance shall be filed with the Planning Director on a proper form provided for that purpose.
  2. Other appeals shall be submitted to the Planning Commission
  3. Appeals applications shall be filed in a timely manner in advance of a scheduled hearing date as the Planning Commission may provide in its rules of procedure.
  4. Application forms shall be complete, and shall clearly specify the grounds of the appeal. Where required by the nature of the appeal, the application shall be accompanied by detailed plans, drawn to scale, showing all details of the land area and the nature of the circumstances surrounding the appeal.
  5. The application shall be accompanied by the required fee.
  6. The Planning Director shall reject, and refuse to refer to the Planning Commission any application not accompanied by the required fee or by other materials and information as required by this Ordinance.
- C. Public Hearing**
1. The Planning Commission shall hold public hearings for all variance applications.
  2. Such Public Hearings may be continued from time to time and additional Hearings may be held.
  3. Hearings shall be conducted according to applicable Minnesota Statutes and to the rules of procedure of the Planning Commission.
- D. Public Hearing Notice Requirements**
1. All notices will be sent to recipients at least ten (10) days prior to the date of the Hearing.
  2. Notice of Public Hearing will be published in the official newspaper of the Town of Duluth.
  3. At a minimum, owners of record within three-hundred-fifty (350) feet of the affected property will be notified.

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- E. Criteria for Decisions.** The Planning Commission shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.
1. The Planning Commission may authorize a variance from the terms of this Ordinance which will not be contrary to public interest where, owing to special conditions, a practical difficulty or

particular hardship would be created by carrying out the strict letter of the Ordinance, and when the terms of the variance are consistent with the spirit and intent of this Ordinance and with St. Louis County's and Duluth Township's Land Use or Comprehensive Plan, if any.

2. "Hardship" as used in connection with the granting of a variance means that the property in question cannot be put to a reasonable use under the conditions allowed by this Ordinance; the plight of the landowner is due to circumstances unique to his property not created by the landowner. The variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of this Ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located.
3. When in the opinion of the Planning Commission a variance may result in a material adverse effect on the environment, the appellant may be required by the Planning Commission to demonstrate the nature and extent of the effect.
4. It shall be the burden of the applicant to demonstrate sufficient hardship to sustain the need for a variance. Absent a showing of hardship as provided in Minnesota Statutes and this Ordinance, the Planning Commission shall not approve any variance. The Planning Commission may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest

**Section 4. Conditional Uses – See Article IX, page 75, *Conditional Uses***

**Section 5. Subdivision Platting – See Article III, Section 1-H, page 38**

**Section 6. Planned Unit Developments—See Article XII, page 95**

**Section 7. Zoning Amendments – See Article XI, page 93, *Amendments***

**Section 8. Other Appeals.**

When an appeal is regarding specific properties or the interpretation of the ordinance in general, the appeal process is described below:

1. When an appeal is made as the result of any order, requirement, decision or determination of the Planning Director, and if such appeal is regarding the application of this Ordinance to specific properties, the following notice requirements will apply:
  - a. All notices will be published or sent to recipients at least ten (10) days prior to the date of the hearing.
  - b. Notice of Public Hearing will be published in the official newspaper of the Town of Duluth.
2. The Planning Commission may reverse or affirm wholly or partly, or modify the order, requirement, decision or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may cancel or direct the issuance of a permit.
3. Criteria are the same as those listed for **Variations** in **Section 3-E, page 90**.

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**Section 9. Appeals from Planning Commission Decisions.**

All decisions by the Planning Commission shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the State shall have the right to appeal within thirty (30) days, after the receipt of notice of the decision, to the Board of Adjustment.

## **Section 10. Inspections.**

All persons involved in land development activity shall allow free access to authorized representatives of the Town at any reasonable time for making such inspections as may be necessary to determine compliance with the Official Controls of the Town of Duluth. Failure of such persons to allow an inspection shall be considered a violation of this Ordinance and the Planning Director shall have the authority to take appropriate legal actions, to suspend review of a permit, or to revoke a permit.