

Section 535 - Zoning: administration and enforcement

535.01. Conditional use permits. Subdivision 1. Purpose. The purpose of this subsection is to provide the city with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health, and safety. In making this determination, whether or not the conditional use is to be allowed, the city shall make findings of fact related to the nature of the land upon which the use is to be located, the nature of the adjoining land upon which the use is to be located, the nature of the adjoining land or buildings whether or not a similar use is already in existence and located on the same premises or on other lands immediately close by, the effect upon traffic into and from the premises, or on any adjoining roads, and all such other or further factors as the city shall deem a requisite of consideration in determining the effect of such use on the general welfare, public health, and safety.

Subd. 2. Procedure.

- (a) Request for conditional use permits, as provided within this subsection, shall be filed with the city on an official application form a minimum of four weeks before the planning commission meeting at which formal action is requested. Such application shall be charged a fee as established in subsection 515.15. This fee shall not be refunded. Such application shall also be accompanied by three copies of detailed written and graphic materials fully explaining the proposed development or use or both. A certificate of survey showing existing and proposed structures, if any, and any other information determined by the city shall be submitted. The application, along with all related information, shall be referred to the city planning commission for consideration and a recommendation to the city council.
- (b) The applicant or a representative thereof shall appear before the planning commission in order to answer questions concerning the proposed conditional use.
- (c) The conditional use application shall be referred to the city staff for a report and recommendation to be presented to the commission. The city staff's report and recommendations shall be given to the city planning commission at least five days prior to the meeting at which said report and recommendations are to be presented. The report and recommendations of the city staff are to be entered in and made part of the permanent written record of the planning commission meeting.
- (d) The planning commission shall make findings of fact regarding any adverse effects of the proposed conditional use and what additional requirements may be necessary to reduce such adverse effects. Its judgment shall be based upon, but not limited to, the following factors:

- (1) consistency with the city comprehensive plan;
 - (2) the geographical area involved;
 - (3) whether such use will cause deterioration of the area in which it is proposed;
 - (4) the character of the surrounding area;
 - (5) the demonstrated need for such use;
 - (6) whether the proposed use would cause odors, dust, flies, vermin, smoke, gas, noise or vibration, or would impose hazards to life or property in the neighborhood;
 - (7) whether such use would inherently lead to or encourage disturbing influences in the neighborhood;
 - (8) whether stored equipment or materials would be screened and whether there would be continuous operation within the visible range of surrounding residences.
- (e) The planning commission shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant, concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this code.
- (f) Notice of time, place and purpose of the hearing shall be published in the official newspaper at least 10 days prior to the day of the hearing. Individual notices shall be mailed not less than ten days before the hearing to all owners of property, according to the assessment records, within 350 feet of the parcel included in the request.
- (g) Failure of a property owner to receive said notice shall not invalidate any proceedings set forth within this code provided a bona fide attempt has been made to comply with this subsection.
- (h) The planning commission shall recommend such conditions relating to the granting of said conditional use permit as they deem necessary to carry out the intent and purpose of the code or recommend that the request be denied. The planning commission's recommendation and the city staff's report and recommendation shall be forwarded to the city council.
- (i) The city council shall not grant a conditional use permit until they have received a report and recommendation from the planning commission and the city staff. The planning commission shall reach a decision not later than the second regular meeting following the first regular meeting at which the request for a conditional use permit is considered by the commission.

- (j) Upon receiving the report and recommendation of the planning commission and the city staff, the conditional use permit request shall be placed on the agenda for the next regular city council meeting, or as soon as possible thereafter. (Amended, Ord. No. 13-13)
- (k) Upon receiving the report and recommendation of the planning commission and city staff, the city council shall have the option to set and hold a public hearing if deemed necessary and may impose any condition it considers necessary to protect the public health, safety, and welfare.
- (l) Approval of a conditional use permit shall require an affirmative vote of a majority of all of the members of the council.
- (m) The city clerk shall notify the conditional use permit applicant of the council's decision in writing and place a copy of the decision in the central property file.

Subd. 3. Reconsideration. Whenever an application for a conditional use permit has been considered and denied by the city council, a similar application for a conditional use permit affecting substantially the same property shall not be considered again by the planning commission or city council for at least six months from the date of its denial; and a subsequent application affecting substantially the same property shall likewise not be considered again by the planning commission or city council for an additional six months from the date of the second denial unless a decision to reconsider such matter is made by not less than a four-fifths vote of the city council.

Subd. 4. Lapse of conditional use permit by non-use. Whenever within one year after granting a conditional use permit, or two years if a legally binding development agreement has been executed between the applicant and the city, the work as permitted by the permit shall not have been completed, then such permit shall become null and void unless a petition for extension of time in which to complete the work has been granted by the city council. Such extension shall be requested in writing and filed with the city at least 20 days before the expiration of the original conditional use permit. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the conditional use permit. Such petition shall be presented to the city council for a decision.

Subd. 5. Performance bond – conditional use permit. (Amended, Ord. No. 09-03)

- (a) Except in the case of single family detached residential property, upon approval of a conditional use permit the city shall be provided with a performance bond prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said bond shall guarantee completion of improvements to public infrastructure serving the improvements or development such as storm sewer and private site improvements such as landscaping, parking lots or surface water management such as rain gardens in conformance and compliance with the conditions of the conditional use permit and the codes and ordinances of the city. (Amended, Ord. No. 09-03)

- (b) The performance bond shall consist of a bond, cash escrow deposit or irrevocable letter of credit and be in the amount of the city engineer's estimated costs of labor and materials for the proposed improvements or development. (Amended, Ord. No. 09-03)
- (c) The city shall hold the performance bond until completion of the proposed improvements or development and a certificate indicating compliance with the conditional use permit and codes and ordinances of the city has been issued by the city building inspector. (Amended, Ord. No. 09-03)
- (d) Failure to comply with the conditions of the conditional use permit or the codes and ordinances of the city or both shall result in forfeiture of the bond.

535.03. Rezoning and text amendments. Subdivision 1. The city council or the city planning commission may, upon their own motion, initiate a request to amend the text or the districting map of this code. Any person, persons, firm or corporation or their express agent owning real estate may initiate a request to amend the district boundaries or text so as to affect the said real estate or real estate abutting thereto.

Subd. 2. Procedures.

- (a) A request for a rezoning or text amendment together with three copies of detailed written and graphic materials fully explaining the proposal for an amendment to this code shall be filed with the city. At the time of such filing, the applicant shall pay a fee as established in subsection 535.15. This fee shall not be refunded. If the request is a rezoning, a certificate of survey showing existing and proposed structures, if any, must be submitted. If the land to be rezoned is described by metes and bounds or other complicated auditor's subdivision or government lot description, it shall be replatted before or concurrent with rezoning.
- (b) The amendment request and all related information, shall be referred to the city planning commission for consideration and a report and recommendation to the city council.
- (c) An amendment request must be submitted by the applicant at least four weeks prior to the planning commission meeting at which formal action is requested. The city staff shall refer said amendment proposal along with all related information to the planning commission at least five days prior to the regular meeting.
- (d) The amendment request shall be referred to the city staff for a written report and recommendation to be presented to the commission. The city staff's report and recommendation shall be given to the planning commission at least five days prior to the meeting at which said report and recommendation are to be presented. The report and recommendation of the city staff is to be entered in and made part of the permanent written record of the planning commission meeting.

- (e) The planning commission shall hold a public hearing for all zoning map amendments and text amendments. Notice of the time, place and purpose of the hearing shall be published in the official newspaper at least ten days prior to the day of the hearing. Individual notices, if it is a district change request, shall be mailed at least ten days prior to the hearing to all owners of property, according to the assessment records, within 350 feet of the parcel included in the request.
- (f) Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this ordinance provided a bona fide attempt to notify has been made to comply with this subsection.
- (g) The Planning Commission shall reach a decision and make its report to the City Council within 60 days after the regular meeting at which the amendment request was first considered by the Commission.
- (h) The Council shall, upon receiving no report from the Planning Commission within 90 days, place such request on the agenda of its next regular meeting and decide the issue within 30 days.
- (i) Upon receiving the reports and recommendations of the Planning Commission and City staff, the rezoning or text amendment request shall be placed on the agenda of the next regular City Council meeting, or as soon as possible thereafter. Said reports and recommendations shall be entered in and made part of the permanent written record of the City Council meeting. (Amended, Ord. No. 13-13)
- (j) Unless otherwise provided by state law, all amendments to the zoning ordinance shall require a four-fifths affirmative vote of the City Council.
- (k) The City Clerk shall notify the originator of the amendment request of the Council's decision in writing.

Subd. 3. Consideration after denial. Whenever an application for a rezoning has been considered and denied by the City Council, a new and substantially identical application for rezoning affecting the same property shall not be considered again by the Planning Commission or City Council for at least six months from the date of its denial. For good cause shown, the City Council may, by majority vote of all its members, permit such a new application to be considered prior to the expiration of such period.

535.05. Variances and appeals. Subdivision 1. Authority/appeals. The City Council, acting as the board of appeals and adjustments, upon receipt of the recommendation of the Planning Commission, shall have the authority to review and rule on appeals upon the part of any affected property owner where it is alleged that there has been an error in the interpretation or application of the provisions of this code. (Amended, Ord. No. 11-14)

Subd. 2. Authority/variiances. The City Council, acting as the board of appeals and adjustments, upon the receipt of the recommendation of the Planning Commission, shall have the authority to consider and grant variiances to the provisions of this code, including the expansion of nonconformities subject to the following: (Added, Ord. No. 11-14)

(a) variances shall only be granted;

- (1) when the variance is in harmony with the purposes and intent of the code; and
 - (2) when the variance is consistent with the comprehensive plan. (Added, Ord. No. 11-14)
- (b) as part of the determination of whether to grant a variance, the applicant may also be required to establish that there are practical difficulties in complying with this code. "Practical difficulties," as used in connection with the granting of a variance, means that:
- (1) the property owner proposes to use the property in a reasonable manner not permitted by the code;
 - (2) the plight of the landowner is due to circumstances unique to the property and not created by the landowner; and
 - (3) the variance, if granted, will not alter the essential character of the locality.

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Added, Ord. No. 11-14)

- (c) Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, Section 216C.06, subdivision 14, when in harmony with the code. (Added, Ord. No. 11-14)
- (d) Variances shall not be granted to permit any use not allowed in the district in which the property is located. (Added, Ord. No. 11-14)
- (e) The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. (Added, Ord. No. 11-14)

Subd. 3. Application. Requests for review and approval of variances or consideration of appeals shall be submitted by the applicant to the City staff upon an approved application form. Requests shall be submitted a minimum of four weeks prior to the Planning Commission meeting at which formal action is requested. A certificate of survey showing existing and proposed structures, if any, shall be submitted with all variance requests. (Amended, Ord. No. 11-14)

Subd. 4. Application fee. Submission of a request for a variance or an appeal shall be accompanied by a fee as established by Subsection 535.15 of this code. (Amended, Ord. No. 11-14)

Subd. 5 Review and approval. (Amended, Ord. No. 11-14)

- (a) Requests for consideration of variances and appeals shall be reviewed by the Planning Commission, which shall hold public hearings on the items.

- (b) Individual notices of the public hearing shall be mailed to each owner of record of property located within 350 feet of the exterior boundaries of the affected property at least ten days prior to the public hearing. Failure of a property owner to receive said notice shall not invalidate any proceedings set forth in this code provided a bona fide attempt has been made to comply with this Section.
- (c) It shall be the duty of the City staff, upon submission of a request for a variance or appeal, to prepare a report on the request for the use of the Planning Commission and City Council. Copies of the report and the submissions of the applicant shall be provided to the Planning Commission at least five days prior to the scheduled public hearing. Upon presentation at the public hearing, the report shall be entered in and made part of the record of the public hearing.
- (d) The Planning Commission shall hold the public hearing on the request as scheduled. The Planning Commission shall consider the report and recommendation of City staff along with the comments of any members of the public in attendance. The Planning Commission shall have the authority to request additional information of the applicant, or to obtain expert testimony at the expense of the applicant.
- (e) In considering a request for physical variances, the Planning Commission shall make specific findings of fact based upon the evidence and testimony presented regarding the determinations required in paragraphs (a) and (b) of Subdivision 2 of this Section. (Amended, Ord. 11-14)

- (f) In considering requests for appeals, the planning commission shall make specific findings of fact based upon the evidence and testimony presented regarding whether:
 - (1) the interpretation or application of the provisions of this code, in the specific instance cited, was or was not consistent with the intent of this code; and
 - (2) the interpretation or application of the provisions of this code, in the specific instance cited, was or was not consistent with the manner of interpretation or application of the same provisions in other specific, demonstrable situations.
- (g) After due deliberation, the planning commission shall formally act upon the requested variance or appeal in one of the following manners.
 - (1) recommend approval of the variance request or appeal, as submitted, to the city council;
 - (2) recommend approval of the variance request or appeal, with modifications or conditions, to the city council;
 - (3) recommend denial of the variance request or appeal to the city council;
 - (4) postpone action on the variance request or appeal to the next regular meeting of the planning commission or such later date as agreed to by the applicant; or
 - (5) table action on the variance request or appeal, but only with the consent of the applicant.
- (h) With the exceptions of action to postpone or table, the recommendation of the planning commission shall be forwarded to the city council for its consideration. In such case that the planning commission acts to postpone consideration of the variance request or appeal, the applicant shall be provided with a written statement of the reasons for such action. A variance request shall not be postponed more than once without the consent of the applicant and shall always be postponed to the next regular meeting of the planning commission or such later date as agreed to by the applicant. Following initial postponement or failure of the applicant to agree to a satisfactory later date and upon request by the applicant, the planning commission shall forward the variance appeal to the city council for consideration. In such instances, the planning commission may forward the matter with or without a recommendation. The planning commission shall have the authority to table consideration of a variance or appeal for the second time only with the consent of the applicant. Thereafter, the planning commission shall take up consideration of the variance or appeal at any regular meeting requested by one of its members or by the applicant.

- (i) Upon receiving the reports and recommendations of the planning commission and city staff, the variance or appeal request shall be placed on the agenda of the next regular city council meeting, or as soon as possible thereafter. Said reports and recommendations shall be entered in and made a part of the permanent written record of the city council meeting. (Amended, Ord. No. 13-13)
- (j) The city council shall have the option to set and hold a second public hearing as part of its deliberations on the request. If the city council determines to hold a public hearing, the notice requirements of subsection 535.05, subdivision 4(b) shall be followed. The city council retains the authority to question the applicant or his authorized representative regarding the proposal, to request additional information of the applicant or to obtain expert testimony.
- (k) After due deliberation, the city council shall formally act upon the proposed variance in one of the following manners:
 - (1) Approve the variance request or appeal as submitted;
 - (2) Approve the variance request or appeal with modifications or conditions;
 - (3) Disapprove the variance request or appeal;
 - (4) Postpone action on the variance request or appeal to the next regular meeting of the city council or at such later date as agreed to by the applicant; or
 - (5) Table action on the variance request or appeal, but only with the consent of the applicant.
- (l) Action by the city council approving, approving with modifications, or disapproving a variance request or appeal shall require an affirmative vote of a majority of all the members of the council. The applicant shall be provided with written documentation of the city council's action, substantiating the reasons for the council's decision. In such instance that the city council acts to postpone consideration of the variance or appeal, the applicant shall be provided with a written statement of the reasons for such action. A variance or appeal shall not be postponed more than once without the consent of the applicant and shall always be postponed to the next regular meeting of the city council or such later date as agreed to by the applicant. Following initial postponement or failure of the applicant and city council to agree to a satisfactory later date and upon request by the applicant, the city council shall act upon the variance or appeal. Failure of the city council to do so shall automatically be deemed to constitute disapproval. The city council with the consent of the applicant, shall have authority to table consideration of a variance or appeal.

Thereafter, the city council shall take up consideration of the variance or appeal at any regular meeting requested by one of its members or by the applicant. Action by the city council postponing or tabling a variance or appeal shall require a simple majority vote of those present.

- (m) Consideration after denial. Whenever an application for a variance or appeal has been considered and denied by the city council, a new and substantially identical application for a variance or appeal affecting the same property shall not be considered again by the planning commission or city council for at least six months from the date of its denial. For good cause shown, the city council may, by majority vote of all its members, permit such a new application to be considered prior to the expiration of such period.

Subd. 6. Lapse of variance or appeal. Whenever within one year after granting a variance or appeal, or two years if a legally binding development agreement has been executed between the applicant and the city for non-income producing single family residential dwellings, the work as permitted by the variance or appeal shall not have been completed, then such variance or appeal shall become null and void unless a petition for extension of time in which to complete the work has been granted by the city council. Such extension shall be requested in writing and filed with the city at least 20 days before the expiration of the original variance or appeal. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to complete the work permitted in the variance or appeal. Such petition shall be presented to the city council for a decision.

Subd. 7. Performance bond - variances. (Amended, Ord. No. 09-03)

- (a) Upon approval of a variance or appeal, the city shall be provided with a performance bond prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said bond shall guarantee completion of improvements to public infrastructure serving the improvements or development such as storm sewer and private site improvements such as landscaping, parking lots or surface water management such as rain gardens in conformance and compliance with the conditions of the variance or appeal and the codes and ordinances of the city. (Amended, Ord. No. 09-03)
- (b) The performance bond shall consist of a bond, cash escrow deposit or irrevocable letter of credit and be in an amount of the city engineer's estimated costs of labor and materials for the proposed improvements or development. (Amended, Ord. No. 09-03)
- (c) The city shall hold the performance bond until completion of the proposed improvements or development and a certificate indicating compliance with the variance or appeal and codes and ordinances of the city has been issued by the city building inspector. (Amended, Ord. No. 09-03)
- (d) Failure to comply with the conditions of the variance or appeal or the codes and ordinances of the city or both shall result in forfeiture of the bond.

535.07. Certificate of zoning compliance. Subdivision 1. Application. Said certificate shall be applied for coincident with the application for a building permit and shall be issued within ten days after the building inspector shall have found the building or structure satisfactory and given final inspection. Said application shall be accompanied by a fee established by resolution of the city council and set forth in Appendix B of the city code to defray the cost of processing. (Amended, Ord. No. 08-04)

Subd. 2. Construction performed pursuant to the provisions of Chapter IV of the city code establishing and regulating building codes of the city shall not be subject to the requirement of a certificate of zoning compliance established by this code. (Amended, Ord. No. 08-04)

535.09. Enforcement and penalties. Subdivision 1. This code shall be administered and enforced by the city manager who is hereby designated as the enforcing officer. The city manager may institute, in the name of the city, any appropriate actions or proceedings against a violator as provided by statute, charter or ordinance. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this code shall be subject to an administrative penalty in accordance with section 117 of the Robbinsdale city code and each day that a violation is permitted to exist shall constitute a separate offense. (Amended, Ord. No. 14-22)

535.11. Use permit. Subdivision 1. Permit required. As may be specified in the use district provisions of this code, a use permit shall be required prior to erection, addition, or alteration of any building structure use or land. A use permit shall be required prior to the change, modification, or extension of a nonconforming building structure or use.

Subd. 2. Application and fee. A use permit shall be applied for from the construction coordinator. Said application shall be accompanied by a detailed written statement or plans or both describing the proposed change, modification or alteration. An application fee established by resolution of the city council and set forth in Appendix B of the city code shall be charged for each use permit and shall not be refunded.

Subd. 3. Determination. Within ten days after the application for a use permit, the construction coordinator shall determine whether the change, modification, or alteration conforms to the requirements of all applicable city and state regulations and ordinances. This time limit for determination of receptibility shall be automatically extended should a referral to another governmental jurisdiction be required. The applicant shall be advised in writing of the construction coordinator's determination and findings and if acceptable, a use permit shall be granted.

Subd. 4. Certificate of zoning compliance. All cases requiring a use permit shall also require a certificate of zoning compliance and shall be subject to the provisions of subsection 535.07 of this code. (Revised, Ord. No. 91-4, Sec. 6)

Subd. 5. Performance bond.

- (a) Upon approval of a use permit the city shall be provided with a surety bond prior to the issuing of building permits or initiation of work on the proposed improvements or development. Said bond shall guarantee conformance and compliance with the conditions of the use permit and the codes and ordinances of the city.
- (b) The surety bond shall be in the amount of the city engineer's or city building inspector's or both estimated costs of labor and materials for the proposed improvements or development.
- (c) The city shall hold the surety bond until completion of the proposed improvements or development and certificate of zoning compliance indicating compliance with the use permit and codes and ordinances of the city has been issued by the city building inspector.
- (d) Failure to comply with the conditions of the use permit or the codes or ordinances of the city or combinations thereof shall result in forfeiture of the bond.

535.13. Procedures for adopting and amending the comprehensive plan. Subdivision 1. Purpose and intent. This subsection is established to protect and promote health, safety, general welfare, and order within the city through the establishment of procedures, governing adoption and making amendments to the comprehensive plan. The provisions of this subsection are intended to insure that the adoption of the comprehensive plan and amendments made to the comprehensive plan are consistent with the sections of the city code regulating the development and natural environment of the city.

Subd. 2. Definitions.

- (a) "Comprehensive plan" means that document which encompasses the inventory, policy plan, concept plan, development framework/categorical plans, and management and implementation framework as adopted by the city council on August 18, 1981 and as amended.

Subd. 3. Administration of amendment requests.

- (a) Amendments: the city council or the city planning commission may, upon their own motion, initiate a request to amend the text or supporting maps of the comprehensive plan, or both. Any person, persons, firm or corporation or their express agent residing within the city may initiate a request.

Subd. 4. Procedures.

- (a) A request plus three copies of detailed written and graphic materials, where applicable, fully explaining the proposal for an amendment to the comprehensive plan shall be filed with the city and shall be charged a fee as established in subsection 535.15 of this code.
- (b) The amendment request and all related information shall be referred to the planning commission for consideration and recommendation to the city council.
- (c) An amendment request must be submitted by the applicant at least four weeks prior to the planning commission meeting at which formal action is requested. The city staff shall refer said amendment proposal along with all related information to the planning commission at least five days prior to the regular meeting.
- (d) The amendment request shall be referred to the city staff for a written report and recommendation to be presented to the commission. The city staff's report and recommendation shall be given to the planning commission at least five days prior to the meeting at which said report and recommendation are to be presented. The report and recommendation of the city staff is to be entered in and made part of the permanent record of the planning commission meeting.
- (e) The planning commission shall consider all effects of the proposed amendment. Its judgment shall be based upon, but not limited to, the following factors:
 - (1) relationship to the code and the city code;
 - (2) relationship to comprehensive plan and any sub-area plans.
- (f) The planning commission shall hold a public hearing on all comprehensive plan adoptions and amendments. Notice of the time, place and purpose of this hearing shall be published in the official newspaper at least ten days prior to the day of the hearing.
- (g) The planning commission shall reach a decision not later than its second regular meeting following the meeting at which the amendment request was first considered by the commission. If the amendment is of metropolitan significance, the planning commission shall forward the amendment request, along with all related information, to the metropolitan council for review and comment.
- (h) Upon receiving the reports and recommendations of the planning commission, the city staff and the metropolitan council, if applicable, the amendment request shall be placed on the agenda of the next regular city council meeting, or as soon as possible thereafter. Said reports and recommendations shall be entered in and made part of the permanent record of the city council meeting at which the amendment is considered. (Amended, Ord. No. 13-13)

- (i) Unless otherwise provided by state law, all amendments to the comprehensive plan shall require a four-fifths affirmative vote of the City Council.
- (j) The city shall notify the originator of the amendment request of the council's decision in writing.

535.15. Fees. Subdivision 1. Fees.

- (a) In order to defray administrative costs of processing requests for conditional use permits, zoning amendments, variances, appeals, and comprehensive plan amendments, a base fee established by resolution of the city council and set forth in Appendix B of the city code per application shall be charged.
- (b) In order to defray the additional cost of processing requests for conditional use permits, zoning amendments, variances, appeals, and comprehensive plan amendments, all applicants shall pay the total cost of staff or consulting time and materials expended by the city or both in processing of the applicant's requests.
 - (1) Staff or consulting time or both shall include but not be limited to time spent in advising the applicant, time spent researching information necessary for the review and analysis of the request, and time spent in the preparation of written or graphic materials necessary for the processing of the request. Staff or consulting time or both shall not include time spent in making presentations on the request before the planning commission or city council, but shall include time spent in conference with appropriate governmental agencies.
 - (2) Materials shall include, but not be limited to, maps, graphs, charts, drawings, official notifications, written reports, and the printing or reproduction of same.
 - (3) The charge for staff or consulting time or both shall be based upon an hourly rate established and made available to the applicant at such time as an application is submitted. The charge for materials shall be based upon their actual cost to the city.
- (c) For any application for a conditional use permit, zoning amendment, variance, appeal, or comprehensive plan amendment for a single family, non-income producing, residential use, structure, or property, which is intended for the sole use, enjoyment, or occupancy of the applicant, the base filing fee shall also be deemed to be to the total cost of processing the application.

Subd. 2. Fee payable.

- (a) The base fee shall be payable at the time an application is filed with and accepted by the city clerk and shall not be refundable except as provided for in subdivision 3 below.
- (b) At the time of application, the applicant shall be provided with an estimate of costs to process the application. The applicant shall thereupon be required to place on deposit with the city clerk a sum sufficient to cover the amount of the estimate.
- (c) Unless the applicant shall have paid the base fee and placed on deposit with the city clerk any required base fee or deposit, the application will not be scheduled for processing.
- (d) If at any time during the processing of an application the costs for such exceed the combined sum of an applicant's base fee and deposit by an amount greater than 10%, the applicant shall be so informed and provided with a revised estimate of costs. Thereupon, the applicant shall be required to place on deposit an additional sum sufficient to cover the amount of the revised estimate before any additional work on the application proceeds. An applicant may withdraw an application upon being provided the revised estimate of costs. In such case, the applicant shall be liable for the costs incurred for processing the application to the date of the withdrawal, provided such costs shall exceed the combined amount of the applicant's base fee and deposit of record on that date by more than 10%.
- (e) Upon completion of staff review and analysis of an accepted application and prior to any review or public hearing of the application by either the planning commission or city council, the applicant shall be provided with a final written statement of charges for processing the application. If the applicant's base fee and deposits are not sufficient to cover the total charges contained in the final statement, the applicant shall be required to pay the balance due, provided that in no case shall such balance exceed by 10% the combined amount of the applicant's base fee and deposits of record on that date.

Subd. 3. Fee refundable.

- (a) The base fee shall be refundable only upon written withdrawal of the application before any work shall have commenced upon its processing or as provided for in subdivision 2(a) above.
- (b) The deposit shall be refundable to the extent that it exceeds the amount which remains after the base fee has been subtracted from the charges shown in the final statement.
- (c) The deposit shall be refundable upon written notice of the applicant withdrawing an application, but then only after all costs of processing the application up to the date of the withdrawal have been subtracted.

- (d) The base fee or deposit, or portions thereof, may be refundable if upon petition by an applicant the city council makes a finding of fact that the applicant was charged excessive or unwarranted costs. The city council shall only consider such petitions prior to review or public hearing on the application by either the planning commission or itself.

Subd. 4. Fee waiver. The base fee and deposits required to be provided under the provisions of any preceding section shall be waived for any application involving a use or structure which became nonconforming as a result of the adoption of this code on December 22, 1972, provided that the application is made for the purpose of bringing said use or structure into conformance.