

**CITY OF ARLINGTON
ORDINANCE NO. 229**

**AN ORDINANCE REPEALING AND REPLACING SECTION 16 OF ORDINANCE 169, THE
ARLINGTON ZONING ORDINANCE, RELATING TO THE BOARD OF ZONING APPEALS
AND ADJUSTMENTS**

**I. THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE
PUBLIC SAFETY, HEALTH, AND WELFARE, HEREBY ORDAINS SECTION 16 OF
ORDINANCE 169 SHALL BE REPEALED AND REPLACED BY THE FOLLOWING:**

SUBDIVISION 1. CREATION AND MEMBERSHIP.

A Board of Zoning Appeals and Adjustment is hereby established and vested with such administrative authority as is hereinafter provided. The Planning Commission shall serve as the Board of Zoning Appeals and Adjustment. The Board shall serve without compensation.

SUBDIVISION 2. POWERS.

- A. Board of Zoning Appeals and Adjustment decisions shall be advisory to the council who will make the final determination.*
- B. The Board of Zoning Appeals and Adjustment shall hear requests for variances from the literal provisions of the zoning ordinance in instances where their strict enforcement would cause undue hardship. The Board shall make a recommendation to the Council to either grant or deny the variance. Such recommendation shall include findings of fact as required under Subdivision 3 of this Section.*
- C. The Board of Appeals and Adjustment shall also hear requests for reconsideration of zoning applications where it is alleged there has been an error in the administration of the zoning ordinance.*
- D. The Board of Adjustment and Appeals may recommend the imposition of conditions to ensure compliance and to protect adjacent properties.*
- E. The Board of Adjustment and Appeals shall not recommend and the City Council shall not permit as a variance any use of land that is not allowed under this Ordinance for the property in the zone where the affected person's land is located.*
- F. The Board of Adjustment and Appeals shall have such other additional powers as are given to Boards of Adjustment and Appeals by Minnesota law.*

SUBDIVISION 3. FINDINGS OF FACT.

A variance shall not be recommended for approval by the Board or granted by the Council unless the Board first considers the following standards.

- A. An 'undue hardship' exists. "Undue hardship" as used in connection with the granting of a variance shall mean all three of the following conditions exist: the property in question cannot be put to a reasonable use if used under conditions allowed by this Ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential*

character of the locality. The Board/Council shall make a written finding of fact that supports each of the aforementioned conditions exist.

- B. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the Ordinance.*
- C. Undue hardship also includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.*
- D. Variances shall be granted for earth sheltered construction as defined in Mn. Stat. 216C.06, Subd. 14 as may be amended, when in harmony with the zoning ordinance.*

SUBDIVISION 4. PROCEDURE.

- A. Application for any adjustment permissible under the provisions of this Section shall be made to the Zoning Administrator, in the form of a written application for a building permit or for a permit to use the property or premises as set forth in the application. An application for an adjustment shall be accompanied by payment of a fee set by resolution of the City Council from time to time, in addition to the regular building permit fee.*
- B. The Zoning Administrator shall review the application for completeness. If the application is found not be complete, the Zoning Administrator shall specify in writing, within fifteen (15) days of the filing of the application, what items are needed to make the application complete.*
- C. Upon receipt of a complete application, such officer shall set a time and place for a public hearing before the Board of Zoning Adjustment on such application. At least ten (10) days before the date of the hearing, a notice of the hearing shall be published once in the official newspaper.*
- D. In recommending any adjustment or variance under the provisions of this Section, the Board of Zoning Adjustment shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulation to which the adjustment or variance is granted, as to light, air, and the public health, safety, comfort, convenience and general welfare.*
- E. No permit shall be issued under the provisions of this Section unless and until a recommendation of the Board of Zoning Adjustment, as aforesaid, is approved and confirmed by the City Council. In reporting its recommendation of the City Council, the Board of Zoning Adjustment shall report its findings with respect thereto and all facts in connection therewith, and shall specifically and fully set forth any adjustment or variance granted and the conditions designated. Upon receipt of such report, the City Council either shall by resolution approve and confirm the decision, with or without changes, whereupon the permit as applied for may be issued; or shall refuse to approve and confirm the decision. In all cases in which adjustments or variances are granted under the provisions of this Section, the Board of Zoning Adjustment and the City Council shall require such evidence and guarantees as it may deem necessary to insure compliance with the conditions designated in connection therewith.*
- F. If an adjustment or variance is granted under this Section, the applicant shall have six (6) months from the date the application is approved in which to comply with all conditions as set out in said adjustment or variance approval. If the conditions are not complied with within said six (6) month term, then the approval shall be considered void and the application process would have to be initiated again. The City will not be considered to be under any obligation to approve any such new application, simply on the basis that a prior application had been approved.*

II. **BE IT FURTHER RESOLVED THIS ORDINANCE SHALL BECOME EFFECTIVE UPON PUBLICATION.**

Adopted by the City of Arlington on the 20th day of October, 2008.

James R. Kreft, Mayor

Matthew Jaunich, City Administrator

First Reading: October 6, 2008

Second Reading: October 20, 2008

Adopted: October 20, 2008

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