

TO: Cannon Falls City Council
FROM: Zach Logelin, License and Permit Technician
SUBJECT: Variance-Endres Cannon Falls LLC
DATE: January 21st, 2025

BACKGROUND:

The Timber Ridge Development is applying for a Variance pertaining to the four estate lots located at the southeastern corner of the development (see exhibit A).

The applicant is requesting that four estate lots not be paved, as they are required to be under city code.

Timber Ridge is seeking a Variance due to the nature of these lots. The four estate lots are more rural in feel. The lots are serviced via shared driveways and are up to 500 feet in length.

Planning Commission voted to deny at their January 13th meeting.

City Code 152.100:

The purpose of this subchapter is to provide for deviations from the literal provisions of this chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant the variances only when it is demonstrated that the actions will be in keeping with the spirit and intent of this chapter.

City Code 152.103:

The Board of Adjustment and Appeals shall not approve any variance request unless it finds failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met.

(A) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(B) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(C) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(D) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(E) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(F) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety.

(G) The variance is the minimum action required to eliminate the hardship.

(H) The variance does not involve a use that is not allowed within the respective zoning district.

The following are attached to further describe the proposal:

1. Timber Ridge Narrative
2. Estate lot Location
3. City Code Relating to Driveways
4. League of Minnesota-Variations
5. Resolution Denying Variance for Timber Ridge Estate Lots

REQUESTED ACTION:

Please review the proposed Variance to allow the Timber Ridge estate lots to be serviced by gravel drives. Planning Commission voted to recommend denial at their January 13th meeting. Due to the information provided and Planning Commissions request, please approve the Resolution, denying the Variance request for the Timber Ridge Estate lots to be serviced via gravel driveways.



DEVELOPMENT APPLICATION

918 River Road, Cannon Falls, MN 55009 | 507-263-9308

SUBJECT TO STAFF REVIEW

Street Location of Property: Timber Ridge Development

Legal Description of Property: Outlots F and G of Timber Ridge 1st Add

Owner of Record: Name: Endres Canon Falls LLC (Leon Endres)

Daytime Phone: (612) 598-9993

Address: 1505 River Shore Dr

Hastings, MN 55033

E-Mail Address: leon@endresllc.com

Applicant (if other
than owner)

Name: same

Notary Stamp

Daytime Phone: _____

Address: _____

E-Mail Address: _____

Nature of Legal or Equitable Interest of Applicant (Documentation must be attached :)

- | | | | | |
|----------|--------------------------|---|-------------------------------------|-----------------------------------|
| Request: | <input type="checkbox"/> | Conditional Use Permit | <input type="checkbox"/> | Rezoning/Ordinance Text Amendment |
| | <input type="checkbox"/> | Subdivision | <input checked="" type="checkbox"/> | Variance |
| | | <input type="checkbox"/> Concept | <input type="checkbox"/> | Interim Use Permit |
| | | <input type="checkbox"/> Preliminary Plat | <input type="checkbox"/> | Amendment |
| | | <input type="checkbox"/> Final Plat | <input type="checkbox"/> | CUP/PUD |
| | | <input type="checkbox"/> Administrative | <input type="checkbox"/> | Site Plan Review |
| | <input type="checkbox"/> | Administrative Permit | <input type="checkbox"/> | Special Home Occupation |
| | <input type="checkbox"/> | Vacation | <input type="checkbox"/> | Annexation Petition |
| | <input type="checkbox"/> | Comp Plan Amendment | <input type="checkbox"/> | Appeal |
| | <input type="checkbox"/> | Other | | |

Note: Each requested approval may require a separate fee and/or escrow amount, even where they apply to the same project.

Date Application Received: 12/23/24

Date Submission Deemed to be Complete: 12/23/24

Give detailed description of project and reason for conditional use or variance, if applicable:

See attached narrative.

SUPPORTING DOCUMENTATION: Applicant must submit with the application all documentation required by the Zoning or Subdivision Ordinance relating to the requested approval. Applicant will be advised of the completeness. Only when it has been determined that an application is complete will it be placed on a Planning Commission agenda for consideration. Applications that do not include the proper plans and/or documentation may be delayed from formal review. **FAILURE ON THE PART OF THE APPLICANT TO SUPPLY ALL NECESSARY SUPPORTIVE INFORMATION MAY BE GROUNDS FOR DENIAL OF THE REQUEST.**

APPLICANT RESPONSIBILITY FOR PAYMENT OF ALL CITY FEES AND COSTS IN PROCESSING APPLICATION: Applicant acknowledges that she/he understands that before this request can be considered and/or approved, all fees, including the basic application fee and any escrow processing deposits must be paid to the city and that, if additional fees are required to cover costs incurred by the City, the City Clerk has a right to require additional escrow amounts and payment. These fees include all actual costs including, but not limited to, planning, engineering, public notification and legal costs. All processing of an application will be halted if payments are not made within 30 days of receipt of a monthly statement from the City, in the event any escrow account established is insufficient to cover the costs.

SIGNED:



Property Owner

Date: 12/3/24

Applicant (if not the Property Owner)

Date: _____

=====

FOR CITY USE ONLY

Date Application Filed: _____

Basic Fees: 450.00 PAID 12/23/24
check no: 1166

Received By: 3L

Escrow Deposit: _____

Evidence of Ownership Submitted:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Required
Certified Lot Survey:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Required
Legal Description Adequate:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Required

Date of Planning Commission Meeting: 1/13/25

Recommendation of Planning Commission on: _____ ☐ Approve ☐ Deny

Recommendation of City Council on: _____ ☐ Approve ☐ Deny

Subject to following conditions: _____

Attachment A1

**CITY OF CANNON FALLS
ZONING AND SUBDIVISION FEE SCHEDULE
2023**

	Base Fee/Recording	Escrow Deposit*	Total
Zoning:			
Comprehensive Plan Amendment	\$450	\$0	\$450
Variance	\$450	\$0	\$450
Appeal	\$450	\$0	\$450
Rezoning and Ordinance Text Amendment	\$450	\$0	\$450
Amendment	\$450	\$0	\$450
Conditional Use Permit	\$450	\$0	\$450
Planned Unit Development / Conditional Use Permit	\$450	\$0	\$450
Site Plan Review	\$0	\$0	\$0
Interim Use Permit	\$450	\$0	\$450
Administrative Permit	\$150	\$0	\$150
Home Occupation	\$150	\$0	\$150
Annexation Petition	\$450	\$0	\$450
Vacation	\$450	\$0	\$450
Renewal Permit	\$150	\$0	\$150
Other	\$250	\$0	\$250
Subdivision:			
Administrative Subdivision	\$250	\$0	\$250
Concept Plan	\$250	\$0	\$250
Preliminary Plat	\$500	\$2,500	\$3,000
Final Plat	\$500	\$500	\$1,000
Park Dedication:			
All Residential Units	Fees set by City Council Resolution	NA	10% land \$1,390.00/unit
Commercial	Fees set by City Council Resolution	NA	10% land \$2,000.00/acre
Industrial	Fees set by City Council Resolution	NA	10% land \$2,000.00/acre

**Whether or not an Escrow Deposit is required, if a consultant is engaged by the City to review the application and a cost is incurred for services rendered the applicant is responsible for payment of any and all professional service expenses. The final determination by the City Council will not be recorded unless and until any and all fees due have been paid by the applicant.*

**TIMBER RIDGE – ESTATE LOTS
DRIVEWAY VARIANCE REQUEST
NARRATIVE
1/15/25**

On August 15, 2023, Cannon Fall's City Council Resolution 2695, approved the Preliminary Plat, Rezoning, and PUD Plans for the Timber Ridge development. On January 16, 2024, the City Council approved Resolution 2732, adding four Estate Lots to the approved Timber Ridge Preliminary Plat. On January 16, 2024, the City Council also approved Resolution 2733, approving a variance allowing the Estate Lots to be served via well and septic due to the remote location of the Estate Lots and that public sewer and water facilities are not and will not be available to the property for a reasonable period of time.

Endres Canon Fall LLC, the Timber Ridged Developer, requests a variance for the homes of the Timber Ridge Estate Lots to be accessed by gravel driveways rather than driveways surfaced with pavement or concrete as required per city driveway design ordinance 152.258 (L). See Exhibit A for Estate Lot locations within the Timber Ridge preliminary plat.

The Timber Ridge Estate Lots are not typical city lots served by city streets. The lots are disconnected from the city by a ravine, and two are separated by County Road 24. To access the lots, one must leave the city limits and travel county roads. See Exhibit B. The Estate Lots are located directly on County Road 24 with rather long shared driveways ranging from 330 to 500 feet long. Due to the location of the lots away from city streets and utilities and the location of the pads due to the terrain and need for septic areas the extra-long driveways are a hardship. The requested more economical gravel driveways are the norm for neighboring rural lots along County Road 24 and County Road 25. Requiring a paved or concrete driveway for a typical city driveway of 35 to 55 ft is reasonable, requiring a paved or concrete driveway for larger rural lots off a county road is a hardship.

County access permits were obtained, and the shared portion of the gravel driveways were installed in the fall of 2024. The typical cross-section included, stabilization fabric, 8" to 12" of 3-inch minus rock, and 9" of class 5. Basically, the driveways were built to a typical gravel road standard which will be needed for future home construction.

For the future owners of the Estate Lots, driveway maintenance agreements have been created and will be tied to the title of the lots. The maintenance agreements establish maintenance standards, processes for future upgrades (i.e. paving in the future), and cost-sharing.

Our goal in redeveloping and revitalizing this portion of the city is to provide a wide variety of homesites at reasonable costs. For the planned Estate Lots, the standard city requirement for pavement or concrete driveways appears excessive when comparing the lots to the neighboring acre lots that are all served with gravel driveways.

Again, our Development Team appreciates City Staff's time and efforts with the Timber Ridge development.

EXHIBIT A

ESTATE LOT'S LOCATIONS

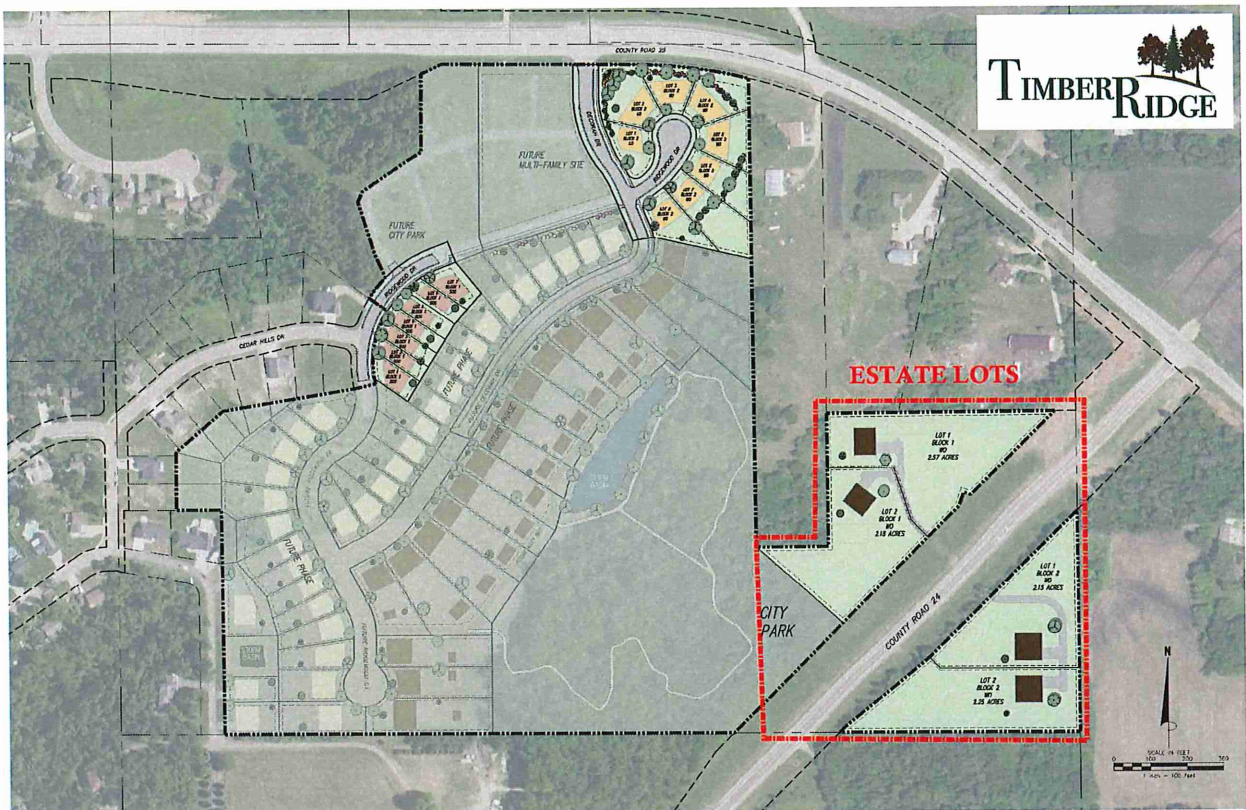
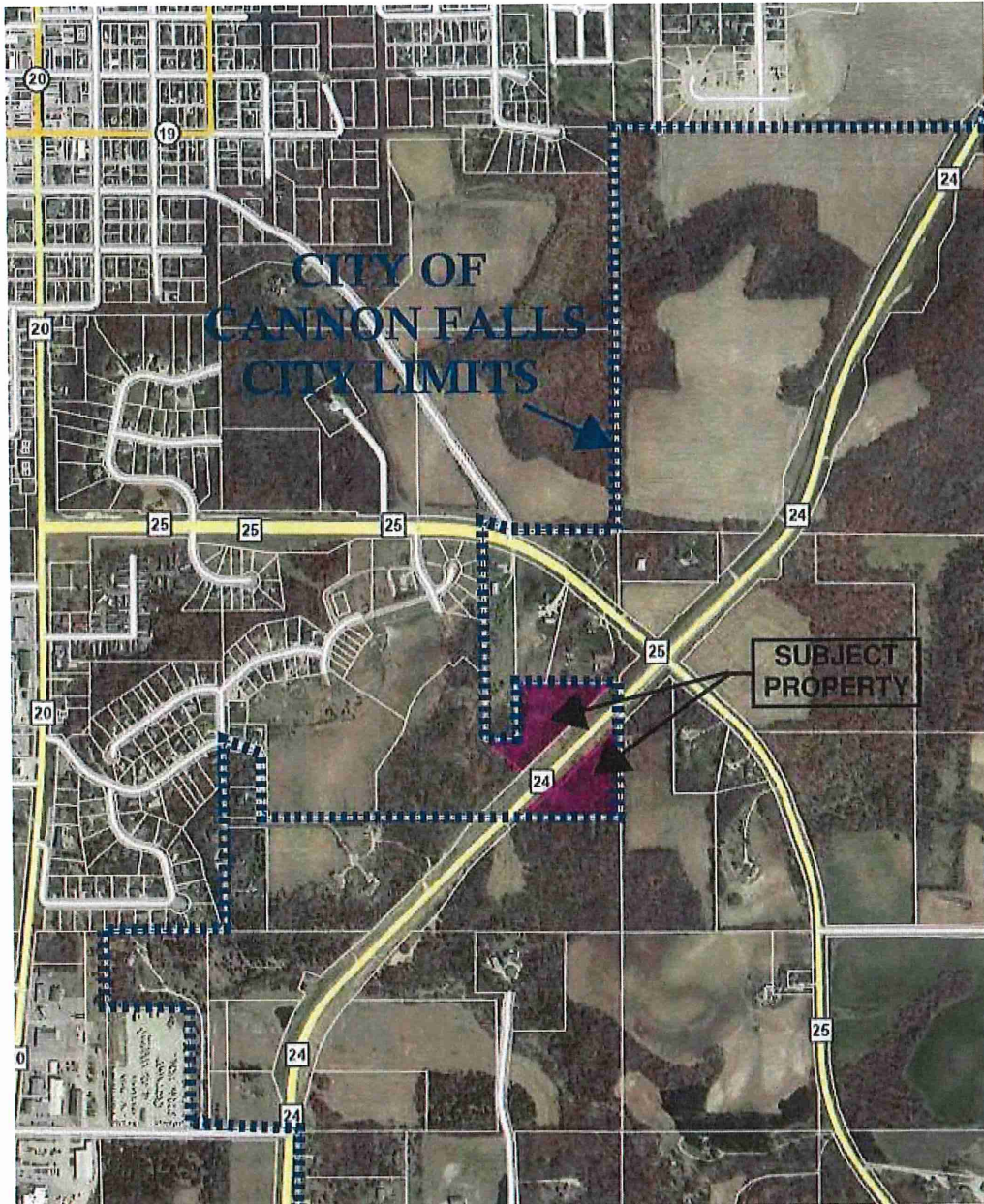


EXHIBIT B

ESTATE LOTS IN COMPARISON TO CITY LIMITS



§ 152.258 PARKING STALL, AISLE AND DRIVEWAY DESIGN; DESIGN STANDARDS.

(A) *Parking lot dimensions.* Except for single-family and two-family residential uses or as otherwise provided for herein, all off-street parking facilities shall conform with the following design standards.

<i>Parking Lot Dimensions Table*</i>				
<i>Angle of Parking</i>	<i>Stall Width</i>	<i>Curb Length Per Car</i>	<i>Stall Depth</i>	<i>Aisle Width</i>
<i>Parking Lot Dimensions Table*</i>				
<i>Angle of Parking</i>	<i>Stall Width</i>	<i>Curb Length Per Car</i>	<i>Stall Depth</i>	<i>Aisle Width</i>
0 degrees	9 feet 0 inches	23 feet 0 inches	9 feet 0 inches	12 feet 0 inches
	9 feet 6 inches	23 feet 0 inches	9 feet 6 inches	12 feet 0 inches
	10 feet 0 inches	23 feet 0 inches	10 feet 0 inches	12 feet 0 inches
20 degrees	9 feet 0 inches	26 feet 4 inches	15 feet 0 inches	11 feet 0 inches
	9 feet 6 inches	27 feet 10 inches	15 feet 6 inches	11 feet 0 inches
	10 feet 0 inches	29 feet 3 inches	15 feet 11 inches	11 feet 0 inches
30 degrees	9 feet 0 inches	18 feet 0 inches	17 feet 4 inches	11 feet 0 inches
	9 feet 6 inches	19 feet 0 inches	17 feet 10 inches	11 feet 0 inches
	10 feet 0 inches	20 feet 0 inches	18 feet 3 inches	11 feet 0 inches
40 degrees	9 feet 0 inches	14 feet 0 inches	19 feet 2 inches	12 feet 0 inches
	9 feet 6 inches	14 feet 10 inches	19 feet 6 inches	12 feet 0 inches
	10 feet 0 inches	15 feet 8 inches	19 feet 11 inches	12 feet 0 inches
45 degrees	9 feet 0 inches	12 feet 9 inches	19 feet 10 inches	13 feet 0 inches
	9 feet 6 inches	13 feet 5 inches	20 feet 2 inches	13 feet 0 inches
	10 feet 0 inches	14 feet 2 inches	20 feet 6 inches	13 feet 0 inches
50 degrees	9 feet 0 inches	11 feet 9 inches	20 feet 5 inches	12 feet 0 inches
	9 feet 6 inches	12 feet 5 inches	20 feet 9 inches	12 feet 0 inches
	10 feet 0 inches	13 feet 2 inches	21 feet 0 inches	12 feet 0 inches
60 degrees	9 feet 0 inches	10 feet 5 inches	21 feet 0 inches	18 feet 0 inches
	9 feet 6 inches	11 feet 0 inches	21 feet 3 inches	18 feet 0 inches
	10 feet 0 inches	11 feet 6 inches	21 feet 6 inches	18 feet 0 inches
70 degrees	9 feet 0 inches	9 feet 8 inches	21 feet 0 inches	19 feet 0 inches
	9 feet 6 inches	10 feet 2 inches	21 feet 3 inches	18 feet 6 inches
	10 feet 0 inches	10 feet 8 inches	21 feet 3 inches	18 feet 0 inches
80 degrees	9 feet 0 inches	9 feet 2 inches	20 feet 4 inches	24 feet 0 inches
	9 feet 6 inches	9 feet 8 inches	20 feet 5 inches	24 feet 0 inches
	10 feet 0 inches	10 feet 3 inches	20 feet 6 inches	24 feet 0 inches
90 degrees	9 feet 0 inches	9 feet 0 inches	20 feet 0 inches	24 feet 0 inches
	9 feet 6 inches	9 feet 6 inches	20 feet 0 inches	24 feet 0 inches
	10 feet 0 inches	10 feet 0 inches	20 feet 0 inches	24 feet 0 inches
* This table pertains to a wall-to-wall situation				

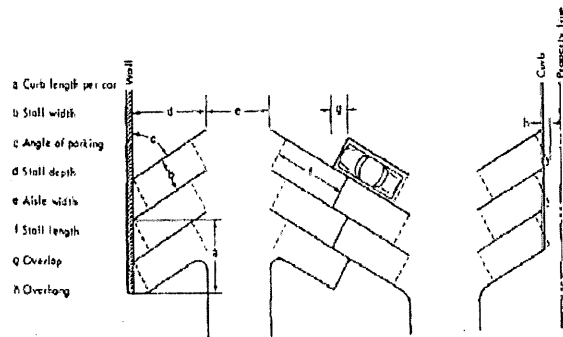
(B) *Parking area and drive aisle setbacks.*

<i>Parking Area and Drive Aisle Setbacks</i>		
<i>Dimension</i>	<i>Land Use</i>	<i>Setback</i>
<i>Parking Area and Drive Aisle Setbacks</i>		
<i>Dimension</i>	<i>Land Use</i>	<i>Setback</i>
Front yard and side yard abutting a street setback of parking and drive to lot line	R Districts	30.0 feet

	Business/Institutional Districts	10.0 feet
	Industrial Districts	10.0 feet
Interior side and rear yard setback of parking to lot line	R Districts	5.0 feet
	Business/Institutional Districts	10.0 feet
	Industrial Districts	10.0 feet

(C) *Joint or combined parking facilities.* Joint or combined parking facilities on separate lots as authorized and when constructed adjacent to a common lot line separating two or more parking areas are not required to observe the parking area setback from the common lot line.

(D) *Commercial and industrial uses.* For commercial and industrial uses, side and rear yard setbacks shall be 20 feet when abutting a residential district.



(E) *Within structures.*

(1) The off-street parking requirements may be furnished by providing a space so designed within the principal building or detached accessory structure.

(2) Unless alternative provisions in compliance with this subchapter and chapter are made, no building permit shall be issued to convert the parking structure into a dwelling unit or living area or other activity.

(F) *Circulation.*

(1) Except in the case of single-family, two-family, townhouse and quadraminium dwellings, access and parking areas shall be designed so that circulation between parking bays or aisles occurs within the designated parking lot and does not depend upon a public street or alley.

(2) Except in the case of single-family, two-family, townhouse and quadraminium dwellings, access and parking area design which requires backing into the public street is prohibited.

(3) Subject to approval of an administrative permit by the Zoning Administrator, the required parking spaces serving one- and two-family dwellings constructed prior to the effective date of this subchapter, may be designed for parking not more than two vehicles in a tandem arrangement for each dwelling unit in order to comply with the requirements of this subchapter. In no case shall the space project into a sidewalk or public or private street or driveway.

(G) *Curb cut location/driveway access spacing.* Curb cut locations and driveway access spacing shall meet the following setbacks.

(1) No curb cut/driveway access shall be located less than 30 feet from the intersection of two or more local street rights-of-way. This distance shall be measured from the intersection of lot lines. Curb cut/driveway access setbacks from the intersection of streets with higher functional classifications shall be consistent with the recommendations of the Comprehensive Plan and require approval by the city.

(a) Street functional classification shall be defined by the Comprehensive Plan.

(b) The setback measurement shall be measured from the edge of the street right-of-way to the nearest edge of the curb cut.

(c) Driveways onto arterials and major collectors shall be prohibited where alternative street access is available. For existing lots of record, where alternative access is not available, direct access onto arterial and major collectors may be permitted, provided a site plan is submitted for review and approval of the city staff. Approval is also subject to the conditions of this subchapter.

(2) Except for single-, two-family and townhouse dwellings, quadraminium curb cut/driveway access on a public street

shall not be located less than 40 feet from one another.

(3) Unless otherwise approved by the city staff, curb cut openings and driveways shall be a minimum of five feet from the side yard property line in all districts. Any shared driveway shall include a maintenance and access agreement.

(H) *Curb cut width.* No driveway curb cut access within the public right-of-way shall exceed the following unless approved by the City Engineer.

<i>Use</i>	<i>Driveway Curb Cut Access</i>
Single-family dwellings with two stall garages	26 feet
Single-family dwellings with three stall garages	26 feet
All other uses	26 feet

(I) *Property lines.* Except as allowed by administrative permit, curb cut openings shall be a minimum of five feet from the side yard property line in all districts.

(J) *Grade elevation.*

(1) *Parking spaces and areas.* The grade elevation of any parking area shall not exceed 5%, except as approved by the City Engineer.

(2) *Driveways.* Unless approved by the City Engineer, the grade elevation of any driveway shall not exceed:

- (a) Ten percent for single-family and two-family dwellings; and
- (b) Five percent for all other uses.

(K) *Number allowed.* Each property shall be allowed one curb cut access for each 125 feet of street frontage, except by administrative permit, subject to the following criteria.

(1) The additional access is necessary to provide adequate on-site circulation.

(2) The additional access shall create a minimum of conflict with through traffic movement and shall comply with the requirements of this chapter.

(L) *Surfacing.*

(1) All areas intended to be utilized for parking space and driveways shall be surfaced with pavement or concrete.

(2) Except for single-family, two-family, townhouse and quadraminium dwellings or as required or exempted by the city staff, drive aisles and parking stalls shall be constructed in accordance with the following minimum tonnage standards:

- (a) One and one-half inch wear course;
- (b) Two inch base course;
- (c) Eight inch aggregate base (Class 5); and
- (d) Subgrade subject to City Engineer's approval.

(3) Plans for surfacing and drainage of driveways and stalls for five or more vehicles shall be submitted to the City Engineer for review and the final plans shall be subject to the Engineer's written approval.

(M) *Striping.* All parking areas of five spaces or more shall be marked with white or yellow painted lines not less than four inches wide.

(N) *Lighting.* Any lighting used to illuminate an off-street parking area shall be in compliance with § 152.187 of this chapter.

(O) *Curbing.* Except for single-family, two-family, townhouse and quadraminiums, all open off-street parking shall have a perimeter continuous concrete curb around the entire parking lot.

(P) *Pedestrian provision.* Off-street parking areas shall be designed so that vehicle and pedestrian circulation is accommodated in a safe, complementary and orderly fashion. When curb separated sidewalks are provided at the head of parking stalls, the minimum width shall be five feet.

(Q) *Parking lot landscaping.*

(1) *Required screening.* All open, nonresidential off-street parking areas of five or more spaces shall be screened and buffered from abutting or surrounding residential districts in compliance with §§ 152.275 through 152.281 of this chapter.

(2) No landscaping or screening shall interfere with drive or pedestrian visibility for vehicles entering, circulating or exiting the premises.

(R) *Compact car spaces.* Up to 20% of the parking spaces in a parking lot may be permanently marked for compact cars

only, provided that:

- (1) The parking lot contains 80 or more off-street parking spaces;
 - (2) All compact car spaces are a minimum of nine feet in width and 16 feet in length;
 - (3) Signs and markings, as approved by the city, are placed and maintained in each compact car space;
 - (4) All required off-street parking aisle widths are maintained;
 - (5) The compact car stalls shall not displace preferred disability accessible parking stall locations; and
 - (6) The design, layout and location of designated compact car spaces shall not be located in immediate proximity to building entrances, shall not encourage utilization by oversized vehicles and shall be subject to approval by the Zoning Administrator.
- (S) *Drive-through windows.* Service windows shall be allowed subject to the following requirements.
- (1) *Stacking.* Not less than 180 feet of segregated automobile stacking lane shall be provided for the service window.
 - (2) *Traffic control.* The stacking lane and its access shall be designed to control traffic in a manner to protect the pedestrians, buildings and green area on the site.
 - (3) *Use of street.* No part of the public street or boulevard may be used for stacking of automobiles.
- (Prior Code, § 11-19-4) (Ord. 258, passed 5-4-2006; Ord. 375, passed 5-4-2021)



Land Use Variances

Published: May 21, 2021

See accompanying model documents below.

This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.

What is a variance?

A variance is a way that cities may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner seeks a variance to allow a use of their property that is not permissible under the zoning ordinance. Such variances are often termed "use variances" as opposed to "area variances" from dimensional standards. Use variances are not generally allowed in Minnesota. State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located ([Minn. Stat. § 462.357, subd. 6](#)).

Granting a variance

Minnesota law provides for a body called the board of adjustment and appeals to hear requests for variances ([Minn. Stat. § 462.357, subd. 6](#)). In many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A city may grant a variance if enforcement of a zoning ordinance provision, as applied to a particular piece of property, would cause the landowner "practical difficulties." For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when:

- They are in harmony with the general purposes and intent of the ordinance, and
- The terms of the variance are consistent with the comprehensive plan.

Legal standards

When considering a variance application, a city exercises "quasi-judicial" authority. This means the city acts like a judge in evaluating the facts against the legal standard. The city's role is limited to applying the legal standard of practical difficulties to the facts presented by the application. If the applicant meets the standard, then the city may grant the variance.

In contrast, when the city writes the rules in the zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

Practical difficulties

“Practical difficulties” is a legal standard that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner.

This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance.

It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner.

The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality.

Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law (2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6).

The 2011 law restored municipal variance authority in response to a Minnesota Supreme Court case (Krummenacher v. City of Minnetonka, 783 N.W.2d 721 (Minn. June 24, 2010)). The law now does both of the following:

- Provides consistent statutory language between city land use planning statutes (Stat. § 462.357, subd. 6) and county variance authority (Minn. Stat. § 394.27, subd. 7).

- Clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of

- reasonableness
- uniqueness
- essential character

The League has developed models that reflect current variance law. Your city attorney should review these models with you prior to council action to tailor them for your city’s needs.

- [View the League model ordinance on issuance of a zoning variance \(doc\)](#).
- [View the League model variance application form \(doc\)](#).
- [View the League model resolution adopting findings of fact \(doc\)](#).

Other considerations

Harmony with other land use controls

State law says, “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan” ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will not alter the essential character of the locality.

For more about findings of fact, see *Taking the Mystery out of Findings of Fact*

Economic factors

Sometimes landowners insist they deserve a variance because they have already incurred substantial cost. They may also argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). Rather, practical difficulties exist only when the three statutory factors are met.

Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request.

While city officials may feel their decision should reflect the overall will of the residents, their task is limited to evaluating how the variance application meets the statutory practical difficulties factors.

Residents can often provide important facts to help the city address these factors, but unsubstantiated opinions and reactions to a request are not a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, it could be overturned by a court if challenged.

Conditions

A city may impose conditions when it grants a variance. Conditions must be directly related to and bear a rough proportionality to the impact created by the variance (Minn. Stat. § 462.357, subd. 6). For instance, if a variance is granted to exceed a height limit, any conditions attached should presumably relate to lessening the effect of excess height.

Variance procedural issues

Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied. Many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not bound by decisions made for prior variance requests. If a city finds it is issuing many variances to a particular zoning standard, the city should consider amending the ordinance to change the standard.

Time limit

A written request for a variance is subject to Minnesota's 60-day rule. It must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval (Minn. Stat. § 15.99).

Documentation

Whatever its decision, a city should create a record that supports it.

If denying the variance, the 60-day rule requires the reasons for the denial be put in writing within the statutory time period (Minn. Stat. § 15.99, subd. 2). Even if the variance is approved, a written statement explaining the decision is advisable.

The written statement should address each of the three practical difficulties factors and list the relevant facts and conclusions for each factor.

For more about findings of fact, see *Taking the Mystery out of Findings of Fact*

Variances once granted

A variance is a property right that “runs with the land.” That is, it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county

recorder. Even if the property is sold to another person, the variance applies.

Models used in this discussion:

- [Issuance of Variances](#), LMC model ordinance (doc)
 - [Variance Application](#), LMC model form (doc)
 - [Adopting Findings of Fact](#), LMC model resolution (doc)
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Your LMC Resource

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**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER _____

**RESOLUTION DENYING VARIANCE FROM PAVED DRIVEWAY
REQUIREMENTS FOR TIMBER RIDGE**

WHEREAS, Timber Ridge (“Applicant”) is the applicant for a Variance for the Timber Ridge Estate lots to be serviced via gravel driveways instead of paved driveways (“The Variance”) located in the City of Cannon Falls legally described on the attached Exhibit A (the “Property”);

WHEREAS, City staff studied the matter, made a report, and provided other information to the Planning Commission and City Council; and

WHEREAS, on January 13th, 2025, the Planning Commission held a public hearing and considered the Applicant’s Variance application, recommending denial; and

WHEREAS, the City Council considered the matter at its January 21st, 2025 meeting, receiving the recommendation of the Planning Commission, the report from City Staff, and other information.

NOW, THEREFORE, the City Council of the City of Cannon Falls makes the following:

FINDINGS

1. The Applicant is requesting a Variance from City Code § 152.258(L), which requires driveways within city limits to be paved. The Applicant is seeking a Variance from this section of the code, to allow the four estate lots at the southeast corner of the development to be serviced via gravel driveways.

2. The Property is part of the Timber Ridge Development. The Variance would apply to the four estate lots located at the southeast corner of the development, legally described in Exhibit A.

3. Minn. Stat. § 462.357 grants to the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate use of land within the City through zoning regulations.

4. The granting of variances within the City is governed both by the City Code and State Statutes.

5. Minn. Stat. § 462.357, subd. 6 allows variances only when they are in harmony with the general purposes and intent of the City Code and consistent with the City’s comprehensive plan. Further, the Applicant must establish that there are practical difficulties in complying with city ordinance.

6. City Code § 152.100 states:

The purpose of this subchapter is to provide for deviations from the literal provisions of this chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant the variances only when it is demonstrated that the actions will be in keeping with the spirit and intent of this chapter.

7. City Code § 152.103 states:

The Board of Adjustment and Appeals shall not approve any variance request unless it finds failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met.

(A) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(B) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(C) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(D) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(E) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(F) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety.

(G) The variance is the minimum action required to eliminate the hardship.

(H) The variance does not involve a use that is not allowed within the respective zoning district.

8. The Variance request is not in harmony with the general purpose and intent of the City Code and is not consistent with the comprehensive plan. The Variance to deviate from City Code section 152.258(L) is not in line with the standards set forth by the Cannon Falls City Code and the Minnesota League of Cities. The request is not considered a practical difficulty due to the fact that the landowner can still use the property without the request. The need for a Variance was created by the property owner attributed to the platting of the lots. Additionally, the Variance request will alter the essential character of the city as all driveways in city limits must be paved. The Minnesota League of Cities states Variances cannot be granted solely to relieve financial hardship.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cannon Falls and based upon the information received and the above Findings:

1. The City Council of the City of Cannon Falls does hereby approve the attached resolution, denying the Variance request for Timber Ridge to service the four estate lots, described as outlots F and G, via gravel driveways.

ADOPTED by the City of Cannon Falls this 21st day of January, 2025

Matt Montgomery, Mayor

ATTEST: _____
Jon Radermacher, City Administrator

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Outlots F and G of Timber Ridge 1st Addition