
Section 7: Zoning and Subdivision Procedures

7.1 General

7.1.1 Permitted Uses

Except as provided for in this Chapter, no building or premises may hereafter be used or occupied within a given land use district unless it is a permitted use in that district or unless it is authorized as a conditional or interim use. Section 4.2 gives the various permitted and conditional uses.

7.1.2 Nonconforming Uses

Unless specifically provided otherwise herein, the lawful use of any land or building existing at the time of adoption of this Unified Development Ordinance may be continued even if such use does not conform to the regulations of this Unified Development Ordinance, as stated in Minnesota Statutes, Section 394.36. Such uses may be allowed provided they adhere to allowances as outlined in Section 394.36 Subd 1(a) – Section 394.36 Subd 5(g)

In addition, the lawful use of any land or building existing at the time of adoption of this Unified Development Ordinance may be continued even if such use does not conform to the regulations of this Unified Development Ordinance, provided:

- (a) No such nonconforming use of land shall be expanded to occupy a greater area of land than that occupied by such use at the time of the adoption of this Unified Development Ordinance.
- (b) Such nonconforming use shall not be moved to any other part of the parcel of land upon which the same was conducted at the time of the adoption of this Unified Development Ordinance.
- (c) A nonconforming use of a building existing at the time of adoption of this Unified Development Ordinance may be extended throughout the building provided no structural alterations except those required by Unified Development Ordinance, law, or other regulation are made therein, and provided that no such extension in the floodway overlay zone shall result in increased flood damage potential. Excepted from the structural alteration limitation are single family dwellings, located in residential districts other than R1, provided any structural alterations or additions shall conform with the requirements of the R1 district, and the Floodplain regulations as applicable.
- (d) If a nonconforming use occupies a building and ceases for a continuous period of one year, any subsequent use of said building shall be in conformity to the use regulation specified by this Unified Development Ordinance for the district in which such building is located.
- (e) Any nonconforming use shall not be continued following 50% destruction of the building in which it was conducted by flood, fire, wind, earthquake, or explosion, according to the estimate of the Building Inspector, approved by the City Council, unless application for a building permit is made within 180 days of when the property is damaged. If a building permit is applied for, the City may impose reasonable conditions upon the building permit in order to mitigate any newly created impact on adjacent property or water body.
- (f) Upon the effective date of this Unified Development Ordinance, where there is a nonconforming use of land on a parcel with no structure or where there is a nonconforming use of land (such as storage of equipment and supplies), on which there is a conforming structure such use shall be terminated within two years following the effective date of this Unified Development Ordinance.

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7.2 Review and Decision-Making Bodies

7.2.1 Planning Commission

A Planning Commission of seven members is hereby established and continued as a planning agency advisory to the City Council. The Planning Commission shall have the powers and duties conferred upon it by statute, charter, ordinance or resolution. The Planning Commission shall serve as the Board of Adjustments and Appeals for the purpose of considering variances and appeals. City Council has final decision-making authority at the city-level.

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7.3 Common Review Procedures

7.3.1 Applications Generally

(a) Form

An application must be submitted on the appropriate City form approved by City Council. Any requests not submitted on an approved city form shall not constitute an application for the purposes of this UDO, or Minnesota Statutes, section 15.99, and shall be rejected.

(b) Submission

All applications shall be submitted to the Zoning Administrator or the Zoning Administrator's designee. The Zoning Administrator shall forward applications requiring City Council action to the City Council and is authorized to schedule and provide notice of a hearing on the application if required.

(c) Completeness

An application shall not be deemed complete, and shall immediately be rejected, if it is not accompanied by the required application fee and, if required, an escrow. An application that does not contain all of the information required by this UDO for the particular type of request, any additional information required on the application form, and any other additional information the Zoning Administrator may reasonably determine is needed to have a full understanding of the request and to properly process it under this UDO shall be deemed incomplete and shall not be processed until the applicant provides the additional information and materials required to make it complete. The Zoning Administrator is authorized to determine if an application is complete, what information is required to make an application complete, and to provide written notices of incompleteness identifying the additional information required to make an application complete. The Zoning Administrator may expressly waive one or more application requirements if the Zoning Administrator determines the information is not required under the particular circumstances.

(d) Minimum Information

Every application shall, at a minimum, contain the following information:

- (1) The name and address of the applicant;
- (2) The description of the property to which the application relates, including the property identification number established by the County;
- (3) The name and address of the owner of the property, if different from the applicant;
- (4) If the applicant is not the owner, an explanation of the interest which the applicant has in the property; and
- (5) A showing that all requisite permits, licenses, and approvals from the local municipality have been obtained and that the requirements of any other governmental authority have been met.

(e) **Owner Consent**

An application submitted by someone other than the owner of the property must have the consent of the owner to be considered a complete application.

(f) **Accuracy**

No person shall knowingly make a false statement in an application or present inaccurate information to the City. If the City Council determines an approval was issued based, at least in part, on an applicant's false statement or on the presentation of inaccurate information, it may act to revoke or modify the approval. The City Council shall provide the applicant written notice and an opportunity to be heard before acting to revoke or modify the approval.

(g) **Processing Requests**

All requests submitted to the City pursuant to this Unified Development Ordinance must be made on the City's application form and no such application will be considered complete unless it is accompanied by the applicable application fee and, if required, an escrow. Complete applications shall be processed in accordance with the provisions of this UDO and a decision made on the application within the timelines established in Minnesota Statutes, sections 15.99 and 462.358, subdivision 3b, to the extent either section is applicable to the request. The City has 15 business days from the date of submission to determine if an application is complete. If an application is determined to be not complete, the City will notify the applicant in writing of the information and materials that must be submitted in order to make it complete. The time period in which the City needs to make a final decision does not begin to run until all of the outstanding information and materials are submitted. Nothing in this UDO is intended to limit, or shall be construed as limiting, the period of time allowed the City under law to process or decide a request made under this Ordinance.

The City Council may take final action on an application without a recommendation from the Planning Commission if the Planning Commission does not forward a recommendation on an application to the City Council with

sufficient time to allow the City Council to consider and act on the application within the applicable statutory timeline.

7-3-2 **Conditional Use Permits**

This Unified Development Ordinance identifies certain uses, which because of their nature, operation, and location in relation to other uses require a Conditional Use Permit. The Conditional Use Permit process regulates the location, magnitude and design of conditional uses consistent with the Comprehensive Plan, and the regulations, purposes, and procedures of this Unified Development Ordinance.

The Conditional Use Permits contain minimum conditions to minimize the impact of the use on adjacent properties. To achieve this, this Section sets out the general provisions and criteria applicable to all uses authorized by a Conditional Use Permit. This subsection also describes the procedures governing the application and review process. When considering whether to approve or deny a Conditional Use Permit, the City Council has the discretion to impose site specific conditions designed to mitigate the potential impacts on adjacent properties.

The following rules shall govern applications for a conditional use permit:

(a) **Procedures**

- (1) An application for a Conditional Use Permit shall be initiated by the owner of the property or their authorized agent. The applicant shall fill out and submit to the Zoning Administrator a "Conditional Use Permit" application, copies of which are available at the municipal offices, together with a fee in an amount as set forth by City Council resolution.
- (2) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider within 15 business days of submittal whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (3) The application shall be reviewed by the City staff and reports concerning the application shall be submitted to the Planning Commission for its consideration.
- (4) The application shall be referred to the Planning Commission for public hearing, study, and report in accordance with the public hearing requirements detailed in Section 7 and 8 of this Unified Development Ordinance. The City Council may not act upon the application until it has received the recommendation of the Commission, or until such time has elapsed as pursuant to Minn. Stat. § 15.99 from the date of the receipt of a complete application.
- (5) The Planning Commission shall report its recommendation to the City Council.
- (6) The application and recommendation of the Planning Commission shall be placed on the agenda of the City Council following the recommendation of the Planning Commission.

- (7) The City Council shall make a final determination of the application.
- (8) The applicant or his agent shall appear at each meeting of the Planning Commission and of the City Council during which the application is considered. Furthermore, each applicant shall provide for the Commission or the City Council, the maps, drawings, plans, records, or other information requested for the purpose of assisting the determination of the application.
- (9) The City Clerk, following the City Council's action upon the application, shall give the applicant a written notice of the action taken. A copy of this notice shall be kept on file as a part of the permanent record of the application.

(b) **Standards for Conditional Use Permits**

A conditional use permit may be granted by the City Council after demonstration by evidence that all of the following are met:

- (1) The establishment, maintenance, or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.
- (2) The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
- (3) The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
- (4) Adequate measures have been or will be taken to provide ingress, egress, and parking so designed as to minimize traffic congestion in the public streets.
- (5) The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

(c) **Standards for Conditional Use Permits in the Floodplain (FP), Shoreland (SL) and Mississippi River Critical Corridor Area (CA)**

- (1) Specific standards for conditional uses in the Floodplain (FP) overlay district are found in Sections 3.2.1(d)(3), 3.2.1(d)(4) and 3.2.1(j)(4).
- (2) Specific standards for conditional use permits in the Shoreland (SL) overlay district are found in Section 3.2.2(c)(5).
- (3) Specific standards for conditional use permits in the Mississippi River Critical Corridor Area (CA) are found in Section 3.2.3(c)(4).

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(d) **Conditions and Restrictions**

The Planning Commission may recommend and the City Council may impose such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary for the protection of the public interest and to secure compliance with requirements

specified in this Unified Development Ordinance. In all cases in which conditional use permits are granted, the City Council may require such evidence and guarantees as it may deem necessary as part of the conditions stipulated in connection therewith.

(e) **Modifications**

No modification of an existing Conditional Use Permit may be made until a public hearing has been held by the Planning Commission in the manner outlined in Sections 7 and 8.

(f) **Minor Amendments.**

A minor amendment may be granted for proposed changes or modifications which are determined by the Zoning Administrator to not have a significant effect on required parking, required yards, floor area ratios, ground floor area ratios, signage, building height, density, covenants or agreements required by the original Conditional Use Permit, or changes in Conditional Use Permits issued in the floodplain districts.

(g) **Filing of Approved Conditional Use Permit**

The resolution approving a Conditional Use Permit or modification of a Conditional Use Permit shall include the legal description of the property for which the Permit was issued and a list of any conditions set forth by the City Council as part of the approval of the Conditional Use Permit. A certified copy of the resolution shall be filed by the applicant with the Hennepin County Recorder within 60 days of approval of the resolution.

(h) **Resubmission**

No application for a conditional use permit which has been denied by the City Council shall be resubmitted for a period of twelve (12) months from the date of the final determination by the City Council; except that the applicant may set forth in writing newly discovered evidence of change of condition upon which they rely to resubmit at an earlier time.

(i) **Revocation of Conditional Use Permits**

- (1) When a conditional use permit has been issued pursuant to the provisions of this Unified Development Ordinance, such permit shall not expire unless it is revoked by City Council action or the property is rezoned to a different zoning district.
- (2) Conditional use permits granted pursuant to the provisions of a prior Unified Development Ordinance of Brooklyn Center shall expire within one year of the effective date of this Unified Development Ordinance if construction upon the subject property pursuant to such conditional use permit has not commenced within that time. Any applicant that has not met this criteria must resubmit the conditional use permit and pay all required fees.

(j) **Enforcement**

Conditional Use Permits shall remain in effect as long as the conditions stated in the Conditional Use Permit are observed, but nothing in this section shall prevent the City from enacting or amending official controls to change the status of conditional uses.

Failure to comply with those conditions will result in a warning letter from the City for the first two documented violations. Subsequent violations will require City Council review and notification sent to the property owner. City Council may consider allowing the permit to continue as currently conditioned, changing conditions to address violations, or termination of the conditional use permit altogether.

7-3-3 Interim Uses

Certain uses are classified in this Unified Development Ordinance as interim uses. Interim uses are allowed temporarily by an interim use permit which is subject to certain conditions and expiration on a particular date, until the occurrence of a particular event, or until this UDO no longer allows the use. A use allowed by an interim use permit must be consistent with the City's comprehensive plan and be compatible with surrounding uses. Conditions may be applied to issuance of the permit and a periodic review of the permit may be required. Upon the expiration of a permit, all activities associated with the use allowed by the permit must cease until a new permit is applied for and granted by the City.

The following rules shall govern applications for an interim use permit. The Zoning Administrator on a case-by-case basis may waive certain items in writing.

(a) Application

- (1) Whenever this Development Ordinance requires an interim use permit, an application shall be filed with the Zoning Administrator.
- (2) The application shall be accompanied by development plans of the proposed use showing such information as may be deemed necessary by the City Council. The Zoning Administrator on a case-by-case basis may waive certain items in writing.
 - (A) The scale of maps submitted shall be appropriately scaled in accordance with the size and scope of the project. The number of maps and reports to be submitted shall be specified by City procedure. All maps shall be reduced and included in the applicable reports.
 - (B) Certificate of Survey.
 - (C) Site Plan drawn to scale showing the following information:
 - i. Existing Conditions. Property lines and dimensions, building location and setbacks, dimensions of buildings, curb cuts, driveways, access roads, parking, off-street loading areas, septic systems, and wells.
 - ii. Proposed Conditions. Property lines and dimensions, building location and setbacks, building dimensions, curb cuts, driveways, access roads, parking, off-street loading areas and any other proposed improvements.
 - (D) Landscaping Plan with the following information.
 - i. Existing vegetation, proposed plantings, plant schedule including information about the plant size, quantity, type and root condition and ground cover.

- (E) Grading, Drainage and Erosion Control Plan.
- (F) Soil Conditions.
- (G) Building Floor Plans.
- (H) Building Elevations, noting exterior materials.
- (I) General Location Map.
- (J) Principal land uses within 200 feet of the property.
- (K) Proof of ownership in the form of Abstract of Title, Certificate of Title, Attorney's Legal Opinion, unrecorded documents where petitioner will acquire legal or equitable ownership
- (L) Type of business or activity and proposed number of employees.
- (M) Primary and secondary septic systems and well locations.
- (N) Aerial photograph of site area.
- (O) An analysis or evaluation of the impact of the proposed use on the health, safety, and general welfare on the occupants of the surrounding lands.
- (P) A proposed plan for mitigation of any impacts on the health, safety, and general welfare on the occupants of the surrounding lands and the Township.
- (Q) Such other materials as may be required by the policies and procedures adopted by the City.

(b) **Notice and Hearing Procedure**

- (1) Upon receipt of an application that contains all required information, the Zoning Administrator shall refer the matter to the Planning Commission and establish a time for hearing on the application. From the date the Planning and Zoning Division receives the application containing all required information, the City has sixty (60) days to take action on the request or the request shall be deemed approved, provided, however, that the Zoning Administrator may extend this time line by providing written notice of the extension to the applicant before the end of the initial sixty (60) day period. This notification must state the reasons for the extension and its anticipated length, which may not exceed sixty (60) days. The deadline may also be extended as indicated in Minn. Stat. § 15.99 subdivision 3.
- (2) Notice of the time, place and purpose of all public hearing shall be given by publication in the official legal newspaper of the City at least ten (10) days before the hearing. The notice shall state the purpose, time and place of the public hearing.
- (3) Defects in the notice shall not invalidate the proceedings provided a bona fide attempt to comply with the provisions of this Section has been made.

(c) **Criteria for Granting Interim Use Permits**

- (1) The Planning Commission may recommend to the City Council to grant an interim use permit in any district, provided proposed use is listed as an interim use for the district and upon a showing of all of the following:
 - (A) The use conforms to the regulations continued herein and is in harmony with the general purposes and intent of this Unified Development Ordinance and the Comprehensive Plan.
 - (B) The date or event that will terminate the use can be identified with certainty.
 - (C) Permission of the use will not impose costs on the public if it is necessary for the public to take the property in the future.
 - (D) The user agrees to all conditions placed on the permit.
- (2) In determining whether the proposed use is in harmony with the general purpose and intent of this Unified Development Ordinance and the Comprehensive Plan, the Planning Commission shall consider:
 - (A) The impact of the proposed use on the health, safety and general welfare of the occupants of the surrounding lands.
 - (B) Existing and anticipated traffic conditions, including parking facilities on adjacent streets and lands.
 - (C) The effect of the proposed use on utility and school capacities.
 - (D) The effect of the proposed use on property values and scenic views in the surrounding area.
 - (E) The effect of the proposed use on the Comprehensive Plan.
 - (F) The ability of the proposed use to meet the standards of the Unified Development Ordinance.
 - (G) The effects of the proposed use on groundwater, surface water and air quality.
 - (H) That the proposed use is allowed with an interim use permit in the designated zoning district in which it is proposed.
- (3) In connection with the issuance of interim use permits to nonconforming situations, the City Council may require nonconformities to conform to the regulations contained in the zoning regulations and may impose such additional restrictions or conditions as it deems necessary to protect the public interest. When appropriate, restrictive covenants may be entered into regarding such matters.
- (4) The City Council may impose and the applicant shall pay costs incurred by the Zoning Administrator for monitoring compliance with the conditions of the interim use permit.

(d) **Acceptance and Compliance**

An applicant undertaking the use allowed by an interim use permit issued by the Township shall be deemed acceptance by the applicant of the conditions imposed on the permit. The use allowed by an interim use permit shall conform to the applicable sections of this Unified Development Ordinance.

(e) **Length of Interim Use**

Any use permitted under the terms of any interim use permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. Interim use permits shall remain in effect until they expire on the date or occurrence of the event identified in the permit, or until this Unified Development Ordinance no longer allows the use within the district. The City shall be notified in writing within ten (10) days of the transfer of the land which is subject to an interim use permit. Said notice shall be provided by the seller of said land and shall include notification of the buyer's, name, address, telephone number, and certification that the seller has provided the buyer with a copy of the interim use permit and the notice to the City.

(f) Revocation

- (1) A violation of any condition set forth in an interim use permit shall be a violation of this Unified Development Ordinance, and failure to correct said violation within the time period established by the City Council or no later than thirty (30) days of written notice from the Zoning Administrator may result in the revocation of the permit.
- (2) Prior to revoking an Interim Use Permit, the City Council shall provide the permittee at least ten (10) days written notice of a hearing to be held by the City Council regarding the revocation of the Interim Use Permit.
- (3) If, at the conclusion of the hearing, the City Council determines the violation or violations have not been corrected, it may revoke the Interim Use Permit. As an alternative to immediately revoking the Interim Use Permit, the City Council may issue a corrective order that, if not fully complied with by the date or dates set out in the order, shall cause the Interim Use Permit to be revoked without further action by the City Council. The City shall provide the permittee written notice of a revocation or a copy of a corrective order if one is issued. Once revoked, all uses allowed by the Interim Use Permit shall immediately cease.

(g) Records of Interim Uses

- (1) The City will not file a copy of an interim use permit with the County Recorder or Registrar of Titles.
- (2) The Planning and Zoning Division shall maintain a record of all interim use permits issued including information on the use, location, conditions imposed by the City, time limits, review dates, expiration date or event, and such other information as may be appropriate.
- (3) Two copies of as built plans must be submitted to City upon completion.

(h) Amended Interim Use Permits

Amended interim use permits shall be requests for changes in conditions of the existing permit. An amended interim use permit application shall be administered in a manner similar to that required for a new interim use permit.

(i) Expiration of Interim Use Permits

An application for a new interim use permit for a property for which an interim use permit was issued may be submitted before, and in anticipation of, the expiration of the then current interim use permit.

(j) Reapplication

No application for an interim use permit for a particular use on a particular parcel of land shall be resubmitted for a period of six (6) months from the date of the denial of the previous application.

(k) **Planning Commission Decision and Appeal Process**

A decision of the Planning Commission as it relates to an interim use permit is a recommendation to the City Council. The matter will be placed on the next City Council Regular Agenda and a final decision will be made by the City Council, at which time the decision will take effect and shall be considered final. An applicant may appeal such decision by filing an appeal as provided in Minn. Stat. § 462.361 or as may otherwise be provided in law.

(l) **Existing Uses**

All uses existing at the time of adoption of this Development Ordinance that now require an interim use permit may continue in the same manner of operation as the use did upon the effective date of this Ordinance. Any enlargement, structural alteration or intensification of use shall require an interim use permit as provided for above. Additional reasonable conditions may be imposed for the continuation of such use in accordance with the hearing provisions as set forth in Sections 7 and 8.

7.3.4 **Site Plan Approval**

It is declared to be the policy of the City to preserve and promote an attractive, stable residential and business environment for its citizens through encouraging well-conceived, high quality developments. To this end, imaginative architectural concepts shall be employed in the design of buildings and in the development of respective sites. In this regard, every person, before commencing the construction or major alteration of a structure, except one- and two-family dwellings and buildings accessory thereto, shall make application for plan approval from the City Council. Plan approval may be required in conjunction with conditional use permit consideration. The following rules shall govern applications for plan approval.

(a) **Procedures**

- (1) A "Site Plan Approval" application shall be initiated by the owner of subject property or by his authorized agent. The applicant shall fill out and submit to the Secretary of the Planning Commission a "Site Plan Approval" application, copies of which are available at the municipal offices, together with a fee in an amount as set forth by City Council resolution.
- (2) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider within of submittal whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (3) The application shall be reviewed by the City staff and reports concerning the application shall be submitted to the Planning Commission for its consideration within 30 days of receipt of all material required by this Unified Development Ordinance for review of the application.

- (4) The Planning Commission shall report its recommendation to the City Council following the receipt of a complete application.
 - (5) The application and recommendation of the Planning Commission shall be placed on the agenda of the City Council within eighteen (18) days following the recommendation of the Planning Commission, or in the event the Commission has failed to make a recommendation, within sixty (60) days of receipt of a complete application.
 - (6) The City Council shall make a final determination of the application unless the deadline for action is waived, in writing, by the applicant.
 - (A) If during City Council consideration of the plans the applicant submits substantially altered plans from those originally submitted and reviewed by the Planning Commission, the Council shall refer the altered plans back to the Planning Commission for review and recommendation except for alterations or changes requested by the City Council. The time needed for such a referral and review of altered plans shall not count against the time period which the City Council has to make a determination on the application.
 - (7) The applicant or his agent shall appear at each meeting of the Commission and the City Council to answer questions regarding the maps, drawings, plans and to furnish such information as may be required.
 - (8) The Secretary of the Planning Commission, following the Commission's action upon the application, and the City Clerk, following the City Council's action upon the application, shall give the applicant a written notice of the action taken. A copy of this notice shall be kept on file as a part of the permanent record of the application.
- (b) **Required Documents**
- Concurrent with filing application for site plan approval, the applicant shall submit, as required, to the City the following documents and information:
- (1) A survey drawing by a registered engineer or land surveyor showing pertinent existing conditions, accurately dimensioned.
 - (2) A complete set of preliminary architectural drawings prepared by a registered architect showing:

- (A) An accurately scaled and dimensioned site plan indicating parking layout including access provisions, designation of locations of possible accessory buildings; landscaping, including trees and shrubbery with indication of species, planting, size and location.
- (B) Fences or walls or other screening, including height and type of material.
- (C) Lighting provisions, type and location.
- (D) Curbs.
- (E) Building floor plans, elevations, sections and outline specifications, including materials proposed.
- (F) Existing and proposed land elevations, drainage provisions, temporary and permanent erosion control provisions, and utility provisions as may be required.

(c) **Conditions and Restrictions**

- (1) The Planning Commission may recommend and the City Council may impose such conditions and restrictions as deemed necessary to protect the public interest and to secure compliance with the requirements of the Unified Development Ordinance.
- (2) The conditions may include, but are not limited to, the execution and submission of a Performance Agreement with a supporting financial guarantee that the subject property will be constructed, developed, and maintained in conformance with the plans, specifications and standards.

(d) **Amendments to an approved site plan.**

Amendments to an approved site plan shall be administered as follows.

(1) **Minor amendments**

Minor amendments to a site plan include the following, provided that no variances are required and the modifications do not significantly intensify use of the site:

- (A) Landscape changes.
- (B) Parking lot configuration changes (not change in number of spaces).
- (C) Less than 25 percent change in floor area in any one (1) structure.
- (D) Less than 25 percent change in the approved separation of buildings.
- (E) Less than 20 percent change in the ground area covered by the project.
- (F) Less than 20 percent change in the number of residential units.
- (G) Less than 20 percent change in the number of parking spaces provided or required.

(2) **Major amendments.**

Major amendments to a site plan are:

- (A) i. More than 25 percent change in floor area in any one (1) structure.
- (B) ii. More than 25 percent change in the approved separation of buildings.
- (C) iii. Any reduction in the original approved setbacks from property lines if adjacent to single or two-family residential property.
- (D) iv. More than 20 percent change in the ground area covered by the project.
- (E) v. More than 20 percent change in the number of residential units.
- (F) vi. More than 20 percent change in the number of parking spaces provided or required.

(3) Review of minor amendments.

Proposed minor amendments (as specified in "clause a" above) to a site plan shall be reviewed and decided by the Zoning Administrator. Review criteria remain the same and the City may require nonconforming site improvements to be brought into conformance according to Section 2 and 5 of the Unified Development Ordinance. Decisions of the Zoning Administrator may be appealed to the City Council. The Zoning Administrator may determine that a proposed minor amendment is in fact a major amendment and may refer such proposed amendments to the Planning Commission and Council according to the procedure established in "clause d", below. Application fees for a minor amendment to a site plan are set forth in the approved fee schedule

(4) Review of Major amendments

Review of major amendments to a site plan shall follow the application procedure set forth in this subsection for issuance of a new permit

7-3-5 Permit for Land Disturbing Activities

(a) Applicability

No construction, reconstruction, development, redevelopment, grading, excavation, or other activity shall occur without first securing a permit from the Community Development Department if such activity causes a land disturbance of 10,000 square feet or XX cubic yards, or more of land.

(b) Exemptions

A land disturbance permit shall not be required in instances where....(i.e.: when a watershed permit is needed, when a building permit is needed, etc?????)

(c) Required Plans

The applicant shall submit construction plans and supporting calculations. The submittals shall comply with the following requirements.

- (1) The plans shall meet the requirements of the Shingle Creek and West Mississippi Watershed Management Commission's Rules and Standards, and the Minnesota Pollution Control Agency Construction Permit. Alternative treatment best management practices must be considered where any of the following apply:

- (A) Where industrial facilities are not authorized to infiltrate industrial stormwater under a National Pollutant Discharge Elimination System/State Disposal System Permit;
 - (B) When receiving runoff from fueling and vehicle maintenance areas, unless the infiltration practices is designed to allow for spill control;
 - (C) The infiltration practice shall be 10 feet away from all buildings, or;
 - (D) The infiltration practice shall not be used within fifty-feet (50') of a municipal or private well, unless specifically allowed by an approved wellhead protection plan.
- (2) The plan shall provide 2-foot contour lines with spot elevations of proposed grades in relation to existing grades on the subject property and adjacent land. The location and type of erosion control devices shall be clearly labeled.
 - (3) The plan shall address the management of post development runoff and means of assuring the long-term maintenance and operation of best management practices and storm water management structures, devices and methods.

(d) **Conditions and Restrictions**

- (1) The City Engineer may require such additions or modifications to the plan and may impose such conditions and restrictions on the permit as the Engineer deems necessary to provide water quality protection. Such conditions may include, but are not limited to: limiting the size, kind or character of the proposed development; requiring the construction of structures, drainage facilities, storage basins and other facilities; requiring the replacement of vegetation; establishing required monitoring procedures; requiring that the work be staged over time; requiring the execution and filing of such declarations or agreements as the Engineer deems necessary to assure the continuing monitoring and maintenance of all facilities and systems; and requiring a performance bond, or other acceptable security, to assure that all facilities and systems are constructed as required.

The building official may require such additions or modifications to the plan and may impose such conditions and restrictions on the permit as deemed necessary to comply with the Americans with Disabilities Act provisions and to ensure continuous connections with existing public sidewalk and trail infrastructure.

- (2) Every effort shall be made during the permit application process to determine the full extent of erosion control required. However, the City Engineer may require additional controls to correct specific site related problems as inspections are performed during construction.
- (3) All erosion control noted on the approved plan shall be installed prior to the initiation of any site grading or construction.
- (4) All activities requiring a permit under this section shall conform to all requirements of federal, state and local laws, rules and regulations.

- (5) The City Engineer shall inspect and enforce all control measures and shall receive and consider reports of non-compliance or other information on construction issues related to water quality submitted by members of the public. Non-compliance with the requirements of this section, the approved plan, any conditions or restrictions imposed by the City Engineer, or any orders issued by the City Engineer under paragraph (c) of this Section is a violation of this Section. Violation of this Section is a misdemeanor and constitutes grounds for the City to issue an order to halt all construction or pursue any other legal or equitable remedy to enforce the requirement of this Section.

(e) Maintenance of Private Stormwater Management Facilities.

- (1) No private Stormwater Management Facilities may be approved unless a maintenance plan is provided and is consistent with City Code, and the Shingle Creek and West Mississippi Watershed Management Commissions' Rules & Standards. All such facilities shall be inspected annually, with reports submitted to the City, and maintained in proper condition consistent with the performance standards for which they were originally designed.
- (2) Owners of private Stormwater Management Facilities shall enter into an agreement with the City setting out how the owners shall provide for the long-term operations and maintenance of the facilities.

(f) Easements.

The applicant shall establish, in a form acceptable to the City, temporary and perpetual easements for ponding, flowage, and drainage purposes over hydrologic features such as water bodies and stormwater basins. The easements shall include the right of reasonable access for inspection, monitoring, maintenance, and enforcement purposes.

(g) Enforcement Actions to Ensure Compliance.

(1) Orders.

The City may issue an order to modify the approved plan and stipulate a time frame for compliance. The applicant must comply with said order.

(2) Permit Suspension.

The City shall suspend the Permit and issue a stop work order if the City determines the applicant supplied incorrect information, or the applicant is in violation of any provision of the approved plans, the Permit, or this Section. The City shall reinstate a suspended Permit upon the applicant's correction of the cause of the suspension.

(3) Construction Stop Work Order.

The City Building Official may issue a stop work order for a related building Permit if requested by the City.

(4) Permit Revocation.

If the applicant fails or refuses to cease work as required, the City shall revoke the Permit and the applicant shall be subject to enforcement, penalties, and loss of its

financial security. The City shall not reinstate a revoked Permit, but an owner may apply for a new permit.

(5) Remedial Corrective Action.

The City or a private contractor under contract with the City may conduct remedial or corrective action on the project Site or adjacent Sites affected by project failure or to implement actions specified in an order to modify plans. The City may charge applicant for all costs associated with correcting failures or remediating damage from the failures according to the order including but not limited to, materials, equipment, staff City of Brooklyn Center 35-15 City Ordinance time and attorney's fees. If payment is not made within thirty (30) days, payment will be made from the applicant's financial security or, in the case where no Permit was issued, payment will be assessed against the property.

(6) Action Against Financial Security.

In any of the following circumstances, the City shall use funds from the financial security to finance remedial work undertaken later by the City or a private contractor under contract to the City, and to reimburse the City for all direct costs including, but not limited to, staff time and attorney's fees:

- (A) The Applicant ceases Land-Disturbing Activities and/or filling activities prior to completion of the Stormwater Management Plan;
- (B) The Applicant fails to conform to the Stormwater Management Plan as approved or as modified under this Code, and has had his/her Permit revoked under this Code;
- (C) The techniques utilized under the Stormwater Management Plan fail within one (1) year of installation, or before Final Stabilization is implemented for the Site or portions of the Site, whichever is later, or;
- (D) The City determines that action by the City is necessary to prevent excessive erosion from occurring on the Site.

(7) Cumulative Enforcement.

The procedures for enforcement of a Permit, as set forth in this Section, are cumulative and not exclusive.

(h) Financial Security.

The City shall collect a surety for erosion and sediment control before any building permit is issued. The surety is returned to the person who posted the security when the permanent erosion and sediment control has been established and has been approved by the City. The surety will be used to either remedy erosion or sediment control violations or to complete the establishment of permanent erosion and sediment control, as necessary.

7.3.6 Development Agreement Language

(a) Purpose

It is the purpose of this subsection to ensure that a subdivider follows the conditions of approval and properly installs the basic improvements required in a

plat. Whenever a subdivision or other development includes any public improvements or other conditions of approval, the applicant shall enter into a development agreement with the City, setting forth the conditions under which the subdivision or development has been approved.

(b) Required Improvements

(1) Basic Improvements

All of the following required improvements to be installed under the provisions of this subsection shall be designed and constructed in accordance with the design standards of this subsection and the current version of city's engineering standard specifications, which are adopted herein by reference, and approved by and subject to the inspection of the city engineer prior to approval:

- (A) Streets, including curb and gutter;
- (B) Sanitary sewer;
- (C) Watermain;
- (D) Surface water facilities (pipes, ponds, rain gardens, and similar improvements);
- (E) Grading and erosion control;
- (F) Sidewalks/trails;
- (G) Street lighting;
- (H) Street signs and traffic control signs;
- (I) Street trees;
- (J) Tree preservation;
- (K) Wetland mitigation and buffers;
- (L) Monuments required by Minnesota Statutes; and
- (M) Miscellaneous facilities or other elements defined by the guiding documents.

(2) Other Improvements

The subdivider shall arrange for the installation of private utilities including, but not limited to, telecommunications cabling, electrical, and natural gas service.

(c) Installation of basic improvements

- (1) The subdivider shall arrange for the installation of all required improvements in the development subject to the development agreement. All of the city's expenses incurred as the result of the required improvements shall be paid to the city by the subdivider including, but not limited to, legal, planning, engineering, and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of the development agreement, review of construction

plans and documents, and all costs and expenses incurred by the city in monitoring and inspecting development of the plat. The subdivider shall reimburse the city for costs incurred in the enforcement of the development agreement, including engineering and attorneys' fees.

- (2) The City Council reserves the right to, in its sole discretion, elect to install all or any part of the basic improvements required under the provisions of this subsection and assess the costs to the benefiting property owners pursuant to Minnesota Statutes, chapter 429.
 - (3) Unless a grading permit has been issued by the city within the plat or land to be platted, the subdivider may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the plat or land to be platted until all the following conditions have been satisfied:
 - (A) The development agreement has been fully executed by both parties and filed with the city clerk;
 - (B) The necessary security has been received by the city;
 - (C) The plat has been filed with the county recorder's office;
 - (D) The construction plans have been approved and signed by the city engineer; and;
 - (E) The city has issued a letter that all conditions have been satisfied and that the subdivider may proceed.
 - (4) The improvements shall be installed in accordance with this UDO, city standard specifications for utilities and street construction, and the city's engineering standard specifications. The subdivider shall submit plans and specifications that have been prepared by a competent registered professional engineer to the city for approval by the city engineer. The city shall, at the subdivider's expense, provide all on-site inspection and soil testing to certify that the construction work meets the city's standards and approved plans.
 - (5) All labor and work shall be done and performed in a professional manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the city engineer. The subdivider shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this development agreement, for which reimbursement is expected from the city, unless such work is first ordered in writing by the city engineer as provided in the specifications.
- (d) **Time of performance**
- (1) The subdivider shall complete all required basic improvements no later than one year following the commencement of work on the improvements, except:

- (A) Where weather precludes completion;
 - (B) For street lighting;
 - (C) For landscaping; and
 - (D) For the wearing course of streets.
- (2) Where weather precludes completion, the timeline for completion of the improvements may be extended up to an additional six months.
 - (3) The subdivider shall complete street lighting within two years following the initial commencement of work on the required basic improvements.
 - (4) The subdivider shall complete landscaping by the development phase within 90 days following the issuance of a building permit for the last vacant lot within a phase unless weather precludes completion, in which case the landscaping shall be completed at the outset of the next growing season.
 - (5) Neither curb and gutter nor bituminous pavement shall be installed between November 15 and April 15. The final wear course on streets shall be installed between May 15 and October 1 the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base asphalt, curb, or other improvements must be repaired by the subdivider at its own cost prior to final paving. The subdivider may, however, request an extension of time from the city. If an extension is granted, it shall be conditioned upon updating the security posted by the subdivider to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the city engineer.

(e) **Financial guarantees**

- (1) Subsequent to execution of the development agreement, but prior to approval of a signed final plat for recording, the subdivider shall provide the city with a financial guarantee in the form of a letter of credit from a bank, cash escrow, or other form of security acceptable to the city. A letter of credit or cash escrow shall be in an amount as determined by the city engineer.
- (2) It shall be the responsibility of the subdivider to ensure that a submitted financial guarantee shall continue in full force and effect until the city engineer has approved and the city council has accepted all of the required improvements. The city engineer thereby is authorized to release the guarantee or reduce the amount of the guarantee as provided in city code upon the approval and acceptance of the basic improvements.

- (3) When any instrument submitted as a financial guarantee contains provision for an expiration date, after which the instrument may not be drawn upon, notwithstanding the status of the development agreement or of the required improvements, the expiration date shall be December 31 or the closest business day in the case of weekends and legal holidays. Further, the financial guarantee shall be deemed automatically extended without change for six months from the expiration date unless 60 days prior to the expiration date the financial institution notifies the city in writing by certified mail that it does not elect to renew the financial guarantee for an additional period. If the instrument is not to be renewed and has not been released by the city engineer, another acceptable financial guarantee in the appropriate amount shall be submitted at least 60 days prior to the expiration. The term of any extension shall be approved by the city engineer and subject to the requirements of this section. Upon receipt of an acceptable substitute financial guarantee, the city engineer may release the original guarantee.

(f) Forms of financial guarantees

(1) Letter of credit

(A) If the subdivider posts a letter of credit as a guarantee, the credit shall:

- i. Be irrevocable;
- ii. Be from a bank approved by the city;
- iii. Be in a form approved by the city;
- iv. Be for a term sufficient to cover the completion, maintenance and warranty periods identified in this section; and
- v. Require only that the city present the credit with a sight draft and an affidavit signed by the city manager or the city manager's designee attesting to the city's right to draw funds under the credit.

(2) Cash escrow

(A) If the subdivider posts a cash escrow as a guarantee, the escrow instructions approved by the city shall provide that:

- i. The subdivider will have no right to a return of any of the funds except as provided in city code regarding the approval and acceptance of basic improvements; and
- ii. The escrow agent shall have a legal duty to deliver the funds to the city whenever the city manager presents an affidavit to the agent attesting to the city's right to receive funds whether or not the subdivider protests that right.

- (3) A cash deposit made with the city finance department may be used as part of the required financial guarantee in those instances where the applicant elects to have the city install some or all of the public improvements.

(g) Amounts of financial guarantees

The applicant shall submit either a financial guarantee in one of the forms listed in this Section, regarding forms of financial guarantees, for an amount determined by the city engineer in accordance with the following:

(1) Applicant installed improvements

For basic improvements to be installed by the applicant, the required financial guarantee shall include all of the following fixed or estimated costs:

- (A) Costs of the basic improvements identified in city code, subsection 525.03, subdivision 2;
- (B) Engineering, to include applicant's design, construction management, surveying, inspection, and drafting;
- (C) Twenty-five percent contingency or add-on to the costs in paragraphs (1) and (2) of this paragraph; and
- (D) Estimated cost of energy for street lights for the first two years of operation.

(2) City installed improvements

For basic improvements to be installed by the city, the required financial guarantee shall be the sum of the following fixed or estimated costs:

- (A) A cash deposit in an amount equal to 25 percent of the estimated cost of installing the specified public improvements as determined by the city engineer, which costs would include charges incurred by the city for legal, planning, engineering and administration associated with the installation project(s). The deposit shall be applied to the costs of such installations, with the remainder of the costs specially assessed, in the manner provided by Minnesota Statutes, over a period of ten years together with interest thereon;
or
- (B) In lieu of the cash deposit, the subdivider may elect to have the city provide 100 percent of the cost of such installations, which costs shall be assessed over a period of ten years. In such event, the applicant shall post a letter of credit for 60 percent of the cost of assessments, which letter of credit shall be released after the applicant pays the principal and interest on said assessments for two years and which letter of credit shall be separate from any other letters of credit associated with the subdivider's project.

(h) Other cash requirements

The applicant will be responsible for additional cash requirements which must be furnished to the city at the time of final plat approval. The applicant shall not proceed with any improvements until these cash requirements have been paid to the city. The cash requirements may include:

- (1) Utility charges and fees. This may include sewer availability charges (SAC) or trunk fees;
 - (2) Special assessments, including interest;
 - (3) The city's legal, engineering administration, and construction observation fees;
 - (4) Costs associated with traffic control and street signs to be installed in the plat by the city;
 - (5) Map upgrade fee; and
 - (6) Other charges or fees as determined by the city.
- (i) **Approval and acceptance of basic improvements**
- (1) Upon receipt of proof satisfactory to the city engineer that work has been completed and financial obligations to the city have been satisfied, with city engineer approval the security may be reduced from time to time by 90 percent of the financial obligations that have been satisfied. Ten percent of the amounts certified by the applicant's engineer shall be retained as security. Reductions in the financial guarantee shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.
 - (2) The financial guarantee shall be held by the city until, upon written notice by the applicant and certification from a professional engineer that all of the required improvements have been completed and upon verification of such by the city staff, a portion or the entire financial guarantee is released by the city engineer. No financial guarantee shall be released in full until the following has occurred:
 - (A) All improvements have been completed and public improvements have been accepted by the city engineer;
 - (B) Iron monuments for lot corners have been installed;
 - (C) All financial obligations to the city have been satisfied;
 - (D) Reproducible record plans of all public improvements as required by the city engineer have been furnished to the city by the applicant. Such record plans shall be certified to be true and accurate by the registered engineer responsible for the installation of the improvements;
 - (E) A warranty/maintenance guarantee has been provided; and
 - (F) A title insurance policy approved by the city attorney indicating that the improvements are free and clear of any and all liens and encumbrances.
- (i) **Warranty/maintenance guarantee**
- The applicant shall submit either a warranty/maintenance bond or a letter of credit for an amount determined by the city engineer that complies with the following:

- (1) The required warranty period for materials and workmanship from the utility contractor installing public sewer and water mains shall be two years from the date of final written city acceptance of the work;
- (2) The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one year from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the applicant shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two years from the date of final written city acceptance of the work;
- (3) The required warranty period for trees and landscaping is one growing season following installation; and
- (4) The required warranty period for erosion control will be as established in the development agreement.

(k) **Insurance**

The applicant shall take out and maintain or cause to be taken out and maintained until six months after the city has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of subdivider's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for the coverage shall be in accordance to the city's current requirements. The city shall be named as an additional insured on the policy, and the applicant shall file with the city a certificate evidencing coverage prior to the city signing the plat. The certificate shall provide that the city must be given ten days advance written notice of the cancellation of the insurance.

7-3-7 Variances

In instances where the strict enforcement of the literal provisions of this Unified Development Ordinance would cause practical difficulties because of circumstances unique and distinctive to an individual property under consideration, the City Council shall have the power to grant variances, in keeping with the spirit and intent of this Unified Development Ordinance. The provisions of this Unified Development Ordinance, considered in conjunction with the unique and distinctive circumstances affecting the property must be the proximate cause of practical difficulties, as defined in this chapter. Circumstances caused by the property owner or his predecessor in title shall not constitute sufficient justification to grant a variance.

The following rules shall govern applications for a variance from the strict requirements of this Unified Development Ordinance.

(a) **Procedures**

- (1) An application for a Variance shall be initiated by the owner of the property or their authorized agent. The applicant shall fill out and submit to the Secretary of the Board of Adjustment and Appeals a "Variance" application, copies of which are available at the municipal offices, together with a fee in an amount as set forth by City Council resolution.
- (2) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider upon submittal whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (3) The application shall be reviewed by the City staff and reports concerning the application shall be submitted to the Board of Adjustment and Appeals for its consideration of all material required by this Unified Development Ordinance for review of the application.
- (4) The application shall be referred to the Board of Adjustment and Appeals for a public hearing, study and report in accordance with the public hearing requirements detailed in Section 7 of this Unified Development Ordinance. The City Council may not act upon the application until it has received the recommendation of the Board, or until such time has elapsed as pursuant to Minn. Stat. § 15.99 from the date of the receipt of a complete application.
- (5) The Board of Adjustment and Appeals shall report its recommendation to the City Council, following the receipt of a complete application.
- (6) The application and recommendation of the Board of Adjustment and Appeals shall be placed on the agenda of the City Council following the recommendation of the Board of Adjustment and Appeals, or in the event the Board has failed to make a recommendation, until such time has elapsed as pursuant to Minn. Stat. § 15.99 from receipt of a complete application.
- (7) The City Council shall make a final determination of the application of the recommendation by the Board of Adjustment and Appeals. In the event the City Council has failed to make any determination on a complete application, the application will be considered approved pursuant to Minn. Stat. § 15.99, unless the deadline for action is waived, in writing, by the applicant.
- (8) The applicant or his agent shall appear at each meeting of the Board of Adjustment and Appeals and of the City Council during which the application is considered. Furthermore, each applicant shall provide for the Board or the City Council, as the case may be, the maps, drawings, plans, records, or other information (see Section 5.3.2) requested by the Board or the City Council for the purpose of assisting the determination of the application.
- (9) The City Clerk, following the City Council's action upon the application, shall give the applicant a written notice of the action taken. A copy of this notice shall be kept on file as a part of the permanent record of the application.

(b) Standards for Variances

The Board of Adjustments and Appeals may recommend and the City Council may grant variances from the literal provisions of this Unified Development Ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique and distinctive to the individual property under consideration. However, the Board shall not recommend and the City Council shall in no case permit as a variance any use that is not permitted under this Unified Development Ordinance in the district where the affected person's land is located. A variance may be granted by the City Council after demonstration by evidence that all of the following qualifications are met:

- (1) There are practical difficulties in complying with the strict terms of the Unified Development Ordinance. "Practical difficulties," as used in connection with the granting of a Variance, means the property owner proposes to use the property in a reasonable manner not permitted by the Unified Development Ordinance. Economic considerations alone do not constitute practical difficulties.
- (2) The granting of the Variance is in harmony with the general purposes and intent of the Unified Development Ordinance and the Comprehensive Plan.
- (3) The practical difficulty is due to circumstances unique to the property not resulting from actions of the owners of the property and is not a mere convenience to the property owner and applicant.
- (4) The granting of the variance will not alter the essential character of the neighborhood or be detrimental to the health and safety of the public welfare.
- (5) The granting of the Variance will not result in allowing any use of the property that is not permitted in the zoning district where the subject property is located.

(c) Standards for Variances in the Floodplain (FP), Shoreland (SL) and Mississippi River Critical Corridor Area (CA)

- (1) Specific standards for variances in the Floodplain (FP) overlay district are found in Section 3.2.1(j)(3).
- (2) Specific standards for variances in the Shoreland (SL) overlay district are found in Section 3.2.2(c)(4).
- (3) Specific standards for variances in the Mississippi River Critical Corridor Area (CA) are found in Section 3.2.3(c)(3).

(d) Limitations on Variances

No application for a Variance shall be accepted, and no Variance shall be granted by the City for any of the following:

- (1) Land uses not specifically listed within a Use District;
- (2) Floor elevations lower than the Flood Protection Elevation or levels of flood protection required in the Floodplain District.

(e) **Conditions and Restrictions**

- (f) **The Board of Adjustments and Appeals may recommend and the City Council may impose conditions and restrictions in the granting of variances so as to insure compliance with the provisions of this Unified Development Ordinance and with the spirit and intent of the Comprehensive Plan and to protect adjacent properties. Any condition or restriction imposed by the City Council must be directly related to, and bear approximate proportionality to, the impact created by the variance. Extension of Variance**

The owner of the property subject to a Variance may, by application and payment of the fee set by the City Council, apply for an extension of the 1 year Variance period. The application to extend the Variance request must be filed with the Secretary of the Zoning Board of Adjustment and Appeals a minimum of 30 days before the expiration date of the Variance, but such request shall not be filed more than 60 days before the expiration date. The City Council may, by resolution, extend a Variance for a reasonable period of time not to exceed 1 year.

(g) **Denial**

Variances may be denied by resolution of the City Council. A resolution of denial shall constitute a finding by the City Council that the conditions required for approval do not exist.

7.3.8 Appeals

(a) **Appeals Matters**

The Planning Commission acting as the Board of Adjustments and Appeals shall hear and recommend and the City Council shall make a final determination in the following appeal matters:

- (1) Appeals from the denial of a building permit made based on the adoption of an official map as provided for in Minnesota State Law.
- (2) Appeals from an order, requirement, or determination made by an administrative officer in the enforcement of the Unified Development Ordinance, where it is alleged that some error in interpretation exists as provided for in Section 462.357, Subdivision 6 (1), Laws of Minnesota. Decisions made by the Planning Commission or City Council are not appealable to the Board.

(b) **Procedures**

- (1) A written appeal stating the position of the appellant, the specific decision being appealed, the applicable code provisions, and the requested relief and a fee in an amount as set forth by City Council resolution shall be filed with the Board of Adjustments and Appeals within fourteen (14) days of the order, requirement, or determination.
- (2) The Secretary shall refer the matter to the Board by placing the application upon the agenda of the Board's next regular meeting.
- (3) The City Council shall make a final determination of the application within thirty (30) days of the recommendation by the Board of Adjustments and Appeals, or in

the event the Board has failed to make any recommendation, until such time has elapsed as pursuant to Minn. Stat. § 15.99 from the receipt of the written appeal.

- (4) The City Clerk, following the City Council's action upon the application, shall give the applicant a written notice of the action taken. A copy of this notice shall be kept on file as a part of the permanent record of the application.
- (5) All decisions by the Board in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination 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 30 days, after receipt of notice of the decision, to the district court in the county in which the land is located on questions of law and fact.

7.4 Subdivision of Land Procedure

7.4.1 Purpose.

This subsection is established to provide for administrative approval of subdivisions or consolidations that meet specified criteria and for the waiver of standard platting requirements specified elsewhere in this Section. The minor subdivision process is intended largely to facilitate the further division of previously platted lots, the combination of previously platted lots into fewer lots, or for the adjustment of a lot line by relocation of a common boundary.

(a) Criteria for approval.

A minor subdivision or consolidation must comply with the following:

- (1) A property line adjustment that does not increase or decrease the number of parcels
- (2) Lot splits resulting in no more than three (3) parcels.
- (3) The land involved has been previously platted or subdivided by Registered Land Survey and is on file and of record in the Hennepin County register of deeds or registrar of titles.
- (4) The lot or lots have frontage on an existing improved street, if required, and access to municipal services.
- (5) The application will not cause the parcel or any structure on the parcel to be in violation of this Section, the Unified Development Ordinance, or the building code, unless prior or concurrent approval of a variance is granted.
- (6) The property has not been subject to a minor subdivision in the last five (5) years.
- (7) Subdivisions not meeting the criteria for a minor subdivision, or where the proposed minor subdivision involves unusual elements or policy decisions that the Zoning Administrator determines require detailed review, shall be subject to the platting requirements and procedures in this Section.

7.4.2 Application

- (a) **Applications for a minor subdivision or consolidation shall be made to the Community Development Department on forms provided by the City and shall include evidence of ownership interest. The application must be accompanied by the fee specified in the adopted fee schedule.**
- (b) **Applications must include one (1) electronic copy of a certified survey drawn to an engineer's scale with the new lots and new legal descriptions including:**
 - (1) Existing and proposed property lines.
 - (2) Dimensions of the existing and proposed parcels.
 - (3) The area of the existing and proposed parcels.
 - (4) All existing structures, including dimensions to existing and proposed property lines.
 - (5) All visible encroachments.
 - (6) All easements of record.
 - (7) Distance between any existing driveways and existing and proposed property lines.
 - (8) Trees that will be lost due to any proposed construction.

7.4.3 Review

The Zoning Administrator will review the application to determine compliance with this Section. The Zoning Administrator will approve or deny the application and will notify the subdivider of the decision in writing. If the application is denied, the Zoning Administrator will state the reasons for the denial. Any person aggrieved by the decision of the Zoning Administrator may appeal to the Board of Adjustments and Appeals in the manner described in [Section XXX.XX](#).

Commented [MT6]: Confirm references upon finalization

7.4.4 Filing

The subdivider must file a final minor subdivision or consolidation with the Office of the Hennepin County Recorder or Registrar of Titles. Evidence of proper filing must be submitted to the Zoning Administrator prior to issuance of any building permits. If a minor subdivision or consolidation is not recorded within one (1) year after the date of written approval, the Zoning Administrator may, upon ten (10) days' written notice to the subdivider, revoke the approval in writing.

7.4.5 Combination of Land Parcels

- (a) **Multiple parcels of land which are contiguous and adjacent, and which are proposed to serve a single development use and which are under common ownership shall be combined into a single parcel through platting or registered land survey.**
- (b) **Every parcel proposed for some use permitted by the terms of this Unified Development Ordinance shall abut a public right-of-way, provided that where unusual circumstances prevail, the City Council may waive this requirement in favor of a reasonable alternative.**

7.4.6 Preliminary Plat

(a) Procedure

- (1) Before dividing any tract of land into two or more lots or parcels, an owner or subdivider shall file with the city clerk.
 - (A) Four copies of the preliminary plan.
 - (B) A cash fee in an amount set forth by city council resolution. This fee will be used for the expense of the City in connection with approval or disapproval of said preliminary plat.
- (2) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider within 15 business days of submittal whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (3) The City Clerk shall then:
 - (A) Set a public hearing on the preliminary plan, such hearing to be held by the planning commission within 30 days. Notice of said hearing shall be published in the official City newspaper at least ten (10) days prior to the hearing.
 - (B) Refer two copies of the preliminary plan to the planning commission for its examination and report and one copy to the city engineer for his examination and report. Copies of the report of the city engineer shall be given to the planning commission within 15 days.
- (4) The planning commission shall have the preliminary plan on its agenda at its next regular meeting following referral from the city clerk. This meeting is required and may serve as the public hearing.
- (5) The planning commission shall make its report to the council on or before the second regular meeting of the planning commission following referral by the city clerk. If the report of the planning commission has not been received in time to meet this requirement, the council may act on the preliminary plan without such a report.
- (6) If the preliminary plan is not approved by the council, the reasons for such action shall be recorded in the proceedings of the council and transmitted to the applicant. If the preliminary plan is approved, such approval shall not constitute final acceptance of the subdivision.

(b) **Necessary Data For Preliminary Plat**

(1) The preliminary plan shall be clearly and legibly drawn. The size of the map shall not be less than 12 inches by 18 inches. All subdivision maps should, if possible, be drawn at a scale of one inch equals 100 feet.

(2) The preliminary plan shall contain the following information:

(A) Identification And Description

- i. Proposed name of subdivision, which name shall not duplicate or be alike in pronunciation of the name of any plat theretofore recorded in the County.
- ii. Location by section, town, range or by other legal description.
- iii. Names and addresses of the owner, subdivider, surveyor and designer of the plan.
- iv. Graphic scale.
- v. North-Point.
- vi. Date of preparation.

(B) Existing Conditions

- i. Boundary line of proposed subdivision, clearly indicated.
- ii. Existing zoning classification.
- iii. Total approximate acreage.
- iv. Location, widths and names of all existing or previously platted streets or other public ways, showing type, width and condition of improvements, if any railroad and utility right of way, parks and other public open spaces, permanent buildings and structures, easements, and section and corporate lines within the tract and to a distance of 150 feet beyond the tract.
- v. Location and size of existing sewers, water mains, culverts or other underground facilities within the tract and to a distance of 100 feet beyond the tract. Such data as grades, invert elevations, and locations of catch basins, manholes, and hydrants shall also be shown.
 - a. The City Engineer may waive the need to provide grades and invert elevations of existing underground facilities.

- vi. Boundary lines of adjoining unsubdivided or subdivided land, within 100 feet, identifying by name and ownership.
- vii. Topographic data, including contours at vertical intervals of not more than two feet, except that contour lines shall be no more than 100 feet apart. Water courses, marches, wooded areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown. Elevation datum shall be given in reference to U.S. Geodetic Survey, 5th General Adjustment. Topographic data shall be shown for tract and adjacent areas within 300 feet of the tract.

(C) Subdivision Design Features

- i. Layout of proposed streets, showing right of way widths and names of streets. The name of any street heretofore used in the City or its environs shall not be used, unless the proposed street is an extension of an already named street, in which event the name shall be used.
- ii. Location and widths of proposed alleys, pedestrian ways and utility easements.
- iii. Typical cross-sections of proposed improvements upon streets and alleys, together with an indication of the proposed storm water runoff.
 - a. The City Engineer may waive the need to provide typical cross sections of proposed improvements.
- iv. Approximate center line gradients of proposed streets and alleys, if any.
- v. Location, size and approximate gradient of proposed sewer lines and water mains.
 - a. It is not essential this information be submitted until requested by the City Engineer.
- vi. Layout, number and typical dimensions of lots.
- vii. Minimum front and side-street building setback lines, indicating dimensions.
 - a. It is not essential that building setback lines be shown except on curved streets or where obviously extraordinary conditions prevail.
- viii. Areas, other than streets, alleys, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres.

(D) Other Information

- i. Statement of the proposed use of lots (type of residence, business or industry) so as to reveal the effect of the development on traffic, fire hazards or congestion of population.
- ii. Proposed protective covenants.
- iii. Source of water supply.
- iv. Provisions for sewage disposal, drainage and flood control.
- v. If any zoning changes are contemplated, the proposed zoning plan for the areas including dimensions.
- vi. It is not essential that source of water supply, provisions for sewage disposal, nor contemplated zoning changes be indicated unless so requested by the city engineer.
- vii. If, in the opinion of the city engineer, further information is required, such information shall be furnished before the date of the public hearing.

(E) Qualifications Governing Approval Of Preliminary Plan

- i. The council may require such changes or revisions as it deems necessary for the health, safety, general welfare and convenience of the City.
- ii. The approval of a preliminary plan by the council is tentative, only involving merely the general acceptability of the layout as submitted.
- iii. Subsequent approval will be required of the engineering proposals pertaining to water supply, storm drainage, sewerage and sewage disposal, gas and electric service, grading, gradients and roadway widths and the surfacing of streets by the city engineer and other public officials having jurisdiction, prior to the approval of the final plat by the City.
- iv. No plan will be approved for a subdivision which covers an area subject to periodic flooding or which contains extremely poor drainage facilities and which would make adequate drainage of the streets and lots impossible, unless the subdivider agrees to make improvements which will, in the opinion of the city engineer, make the area completely safe for occupancy, and provide adequate street and lot drainage.

7.4-7 Final Plat

(a) Procedure

- (1) The owner or subdivider shall file with the city clerk six copies of the final plat and a permit fee in an amount set forth by city council resolution not later than six months after the date of approval of the preliminary plan; otherwise, the preliminary plan and final plat will be considered void unless an extension is requested in writing by the subdivider and for good cause granted by the council. The owner or subdivider shall also submit at this time an up-to-date certified abstract of title or registered property report and such other evidence as the city attorney may require showing title or control in the applicant. Prior to release by the City of a

final, approved plat, the owner shall reimburse the City the full amount of legal fees incurred by the City in obtaining a review or opinion of title.

- (2) The Final Plan will have incorporated all changes or modifications required by the council; otherwise it shall conform to the preliminary plan. It may constitute only that portion of the approval preliminary plan which the subdivider proposes to record and develop at the time, provided that such portion conforms with all the requirements of this Unified Development Ordinance.
- (3) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider upon submittal of whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (4) The city clerk shall refer one copy of the final plat to the planning commission, one copy to the city engineer, and a copy each to the telephone, power and gas companies. The abstract of title or registered property report shall be referred to the city attorney for his examination and report. The city attorney's report and city engineer's report shall be given to the council within 15 days. The planning commission may at its discretion submit a report to the council.
- (5) If the final plat is approved by the council, the subdivider shall record it with the County Register of Deeds or Register of Titles within 90 days after the date of approval; otherwise, the approval of the final plat shall be considered void.
- (6) The subdivider shall, immediately upon recording, furnish the city clerk with a print of the final plat showing evidence of the recording.

(b) Necessary Data for Final Plat

(1) General.

The final plat shall be prepared by a registered surveyor. All information except topographic data and zoning classification required on the preliminary plan, shall be accurately shown. The size of the map shall be 20 inches by 30 inches. Subdivisions should, if possible, be drawn at a scale of one inch equals 100 feet.

(2) Additional Delineation.

(A) Data required under regulations of county surveyor

Accurate angular and lineal dimensions for all lines, angles, and curvatures used to describe boundaries, streets, alleys, easements, areas to be reserved for public use, and other important features. Dimensions of lot lines shall be shown in feet and hundredths, and the exact area in square feet of each lot shall be shown within each lot on the plat on at least one copy of the final plat.

- (B) When lots are located on a curve or when side lot lines are at angles other than 90 degrees, the width of the building setback line shall be shown. This information is not required if the information is available on the preliminary plat.
- (C) An identification system for all lots and blocks.
- (D) True angles and distances to the nearest established street lines or official monuments (not less than three) which shall be accurately described in the plat.
- (E) Municipal, township, county or section lines accurately tied to the lines of the subdivision by distances and angles.
- (F) Complete curve data, including radii, internal angles, points and curvatures, tangent bearings, and lengths of all arcs.
- (G) Accurate location of all monuments.
- (H) Accurate outlines and legal description of any areas to be dedicated or reserved for public use, or for the exclusive use of property owners within the subdivision with the purpose indicated therein.
- (I) Certification by a registered land surveyor to the effect that the plat represents a survey made by him and that monuments and markers shown thereon exist as located and that all dimensional and geodetic details are correct.
- (J) Notarized certification by owner, and by any mortgage holder of record, of the adoption of the plat and the dedication of streets and other public areas.
- (K) Certification showing that all taxes currently due on the property to be subdivided have been paid in full.

<p>Approved by the city council of the City of Brooklyn Center, Minnesota, this _____ day of _____, 20____</p> <p>Signed _____ Mayor</p> <p>Attest: _____ City Clerk</p>
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- (L) Form for approval of the council as follows:
- (M) Form for approval by County authorities as required.

7.4.8 Combined Preliminary and Final Plat Approval

- (a) **In some instances, due to the simplicity of the proposed subdivision, the City may agree to combine the preliminary and final plat process. The process may be combined only when a proposed subdivision meets all of the following requirements:**
 - (1) The resulting subdivision contains no more than 5 lots.

- (2) The proposed subdivision is located in an area where streets and utilities are in place and capable of serving the subdivision.
- (3) The proposed subdivision does not require the dedication or construction of future streets and will not interfere with the development of adjacent properties.
- (4) The resulting lots shall conform with all provisions of this Unified Development Ordinance unless a variance has been granted.

(b) **Procedure**

- (1) An application for a combined preliminary and final plat, signed by the subdivider and the property owner, shall be submitted to the City. This application shall be accompanied by the following:
 - (A) Three (3) full-scale copies, and one (1) digital copy of the preliminary plat.
 - (B) All of the information required in Section 5.4.3(b) and 5.4.4(b).
 - (C) The required filing fee(s) as established by resolution of the City Council.
- (2) In accordance with Minn. Stat. § 15.99, the City shall review the application and notify the subdivider within 15 business days of submittal whether or not the application is complete. The plat application shall not be officially submitted and considered complete until all the information requirements are complied with.
- (3) The city clerk shall then:
 - (A) Set a public hearing for the combined preliminary and final plat, such hearing to be held by the planning commission within 30 days. Notice of said hearing shall be published in the official City newspaper at least ten (10) days prior to the hearing.
 - (B) Refer two copies of the combined preliminary and final plat to the planning commission for its examination and report and one copy to the city engineer for his examination and report. Copies of the report of the city engineer shall be given to the planning commission within 15 days.
- (4) The planning commission shall have the combined preliminary and final plat on its agenda at its next regular meeting following referral from the city clerk. This meeting may serve as the public hearing.
- (5) The planning commission shall make its report to the council on or before the second regular meeting of the planning commission following referral by the city clerk.
- (6) The council shall act on the combined preliminary and final plat within 60 days of the date on which it was filed with the city clerk. If the report of the planning commission has not been received in time to meet this requirement, the council may act on the preliminary plan without such a report.

- (7) If the combined preliminary and final plat is not approved by the council, the reasons for such action shall be recorded in the proceedings of the council and transmitted to the applicant.
- (8) If the final plat is approved by the council, the subdivider shall record it with the County Register of Deeds or Register of Titles within 30 days after the date of approval; otherwise, the approval of the final plat shall be considered void.
- (9) The subdivider shall, immediately upon recording, furnish the city clerk with a print of the final plat showing evidence of the recording.

7.4.9 Exceptions

(a) **The provisions of Section 5.4 do not apply if the land described is:**

- (1) A single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width, or
- (2) A single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.
- (3) Other exceptions as outlined in Minnesota State Statute 462.358, Subsection 4b.

7.5 Subdivision Design Standards

7.5.1 Purpose And Interpretation.

Each new subdivision becomes a permanent unit in the basic physical structure of the future community, a unit to which the future community will of necessity be forced to adhere. Piecemeal planning of such subdivisions, without correlation to the City's plan, will bring a disastrous disconnected patchwork of plats and poor circulation of traffic. In order that new subdivisions will contribute toward an attractive, orderly, stable and wholesome community environment, adequate municipal services, and safe streets, all subdivisions hereafter platted within the incorporated limits of the City of Brooklyn Center shall in all respects fully comply with the regulations hereinafter set forth in this Unified Development Ordinance. In their interpretation and application the provisions of this Unified Development Ordinance shall be the minimum requirements adopted for the protection of the public health, safety and general welfare.

7.5.2 Scope

Except in the case of a resubdivision, this Unified Development Ordinance shall not apply to any lot or lots forming a part of subdivision plats recorded in the office of the Register of Deeds or Registrar of Titles prior to the effective date of this Unified Development Ordinance, nor is it intended by this Unified Development Ordinance to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or Unified

Development Ordinances except those specifically repealed by, or in conflict with, this Unified Development Ordinance, or with private restrictions placed upon property by deed, covenant or other private agreement, or with restrictive covenants running with the land to which the City is a party.

7.5.3 Minimum Subdivision Design Standards

(a) Conformance with Comprehensive Plan

The proposed subdivision shall conform to the Comprehensive Plan.

(b) Public Street Plan.

- (1) The arrangements, character, extent, width, grade and location of all streets shall conform to the Comprehensive Plan and shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographical conditions, to runoff of storm water, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.
- (2) The arrangement of streets in new subdivisions shall make provisions for the appropriate continuation of the existing streets in adjoining areas.
- (3) Where adjoining areas are not subdivided, the arrangement of streets in new subdivisions shall make provision for the proper projection of streets.
- (4) When a new subdivision adjoins unsubdivided land susceptible of being subdivided, then the new streets shall be carried to the boundaries of the tract proposed to be subdivided.

(c) Public Streets

(1) Right-Of-Way Widths

All right of way widths shall conform to the following minimum dimensions:

Classification	Minimum Width
Minor Arterial	100 feet or as shown on the Comprehensive Plan
Major Collector	80 feet
Minor Collector	60 feet
Local Street	60 feet

(2) Street Deflections.

When connecting street lines of the same street deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a radius adequate to ensure a sight distance of not less than 200 feet for local streets, and of such greater distance as necessary to meet the Minnesota Department of Transportation Road Design Manual, latest revision, for minor arterial and collector streets. The City Council may require greater or lesser sight distances at the recommendation of the City Engineer.

(3) Reverse Curves.

A tangent of at least 50 feet shall be provided between reverse curves on local streets, and of at least 100 feet on minor arterial and collector streets.

(4) **Street Grades.**

The minimum grade for all streets shall be 0.4 percent. Grades within 30 feet of intersections with arterial and collector streets and grades for the turnaround portion of a cul-de-sac street shall not exceed three percent. Otherwise, the maximum grades shall be as follows

Classification	Percentage
Minor Arterial	5%
Collector	5%
Local Street	6%

(5) **Vertical Curves.**

Differing connecting street gradients for minor arterial and collector streets shall be connected with vertical parabolic curves. The minimum length of such curves shall be in accordance with the Minnesota Department of Transportation Road Design Manual, latest revision.

(6) **Local Streets.**

Local streets shall be so aligned that their use by through traffic will be discouraged.

(7) **Street Jogs.**

Proposed new intersections along one side of an existing street shall, wherever practicable, coincide with any existing intersections on the opposite side of such street. Street jogs shall have a centerline offset of at least 125 feet for local streets and 150 feet for minor arterial and major and minor collector streets.

(8) **Safe Intersections.**

Streets shall be laid out to intersect at right (90 degree) angles with a 50 foot minimum tangent from the radius return. The angle of an intersection may be varied in cases where topography or other factors justify a variation, but in no case shall a street intersect with another street at angle of less than 75 degrees. Intersections having more than four corners shall be prohibited.

Minimum curb radius at the intersection of two local streets shall be at least 15 feet; and minimum curb radius at an intersection involving a collector street shall be at least 20 feet.

(9) **Alleys.**

Alleys are not permitted in residential areas.

(10) **Cul-de-sac**

Maximum length cul-de-sac streets shall be 500 feet measured along the center line from the intersection of origin to end of right of way, unless there are 18 or less lots abutting the cul-de-sac. Each cul-de-sac shall be provided at the closed end with a turnaround having an outside roadway diameter of at least 100 feet, and a street property line diameter at least 120 feet.

- (11) **Marginal Access Streets.**
Where a subdivision abuts or contains an existing or planned Minor Arterial, the council may require marginal access streets or other such treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (12) **Half Streets.**
Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations; and where the council finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided.
- (13) **Reserve Strips**
Reserve strips controlling access to streets shall be prohibited except under conditions approved by the council.
- (14) **Railroad or Limited Access Highways Abutting Subdivision.**
Where a subdivision borders on or contains a railroad right of way or limited access highway right of way, the council may require a street approximately parallel to and on each side of such right of way at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts or for commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.
- (15) **Private Streets.**
With the exception of condominium single family attached dwelling unit subdivisions, private streets shall not be approved nor shall public improvements be approved for any private street.
- (16) **Hardship to Owners of Adjoining Property Avoided.**
The street arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.
- (17) **Street Interval.**
In general, provisions shall be made at intervals not exceeding one-half mile for through streets (streets running through the subdivision in a fairly direct manner.)
- (d) **Public Alleys and Pedestrian Ways.**
- (1) Alleys shall be at least 24 feet wide in commercial and industrial areas. The council may require alleys in nonresidential areas where adequate off-street loading space is not available.
 - (2) Pedestrian ways shall be at least 10 feet wide.
- (e) **Easements.**
- (1) **Provided for Utilities.**

With the exception of condominium single family attached dwelling unit subdivisions, easements at least 10 feet wide, centered on rear and other lot lines shall be provided for utilities, where necessary. They shall have continuity of alignment from block to block and at deflection points. Easements for pole-line anchors shall be provided where necessary.

(2) **Provided for Drainage.**

Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right of way conforming substantially with the lines of such water course, together with such further width or construction or both, as will be adequate for storm water runoff.

(f) **Blocks.**

(1) **Factors Governing Dimensions.**

Block length and width or acreage within bounding roads shall be such as to accommodate the size of residential lots required in the area by the zoning Unified Development Ordinance and to provide for convenient access, circulation control and safety of street traffic.

(2) **Nonresidential Blocks.**

Blocks intended for commercial, institutional and industrial use must be designated as such.

(3) **Lengths.**

Block lengths shall not exceed 1,800 feet.

(4) **Arrangements.**

With the exception of condominium single family attached dwelling unit subdivisions, a block shall be so designed as to provide two tiers of lots, unless it adjoins a railroad or limited access highway where it may have but a single tier of lots.

(5) **Pedestrian Ways.**

In blocks over 900 feet long, pedestrian crosswalks may be required by the council in locations deemed necessary to public health, convenience and necessity.

(g) **Lots.**

(1) **Location.**

With the exception of lots in a condominium single-family attached dwelling unit subdivision, all lots shall abut by their full frontage on a publicly dedicated street or a street that has received the legal status as such.

(2) **Size.**

(A) The interior lot dimensions in subdivisions designed for single family detached dwelling developments in the R1 and R2 Districts shall be consistent with dimensions as established by the UDO in Section 5

(B) The minimum corner lot dimensions for single family detached dwelling developments in the R1 and R2 Districts shall be consistent with dimensions as established by the UDO in Section 5:

i.

(C) Where sanitary sewer facilities are not provided, the minimum size of lots shall be 13,500 square feet.

(3) **Butt Lots.**

Butt lots shall be platted at least five feet wider than the average width of interior lots in the block.

(4) **Side Lot Lines.**

Side lines of lots shall be substantially at right angles or radial to the street line.

(5) **Water Courses.**

Lots abutting upon a water course, drainage way, channel or stream shall have an additional depth or width as required, to assure house sites that are not subject to flooding.

(6) **Features.**

In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, water courses, historic spots or similar conditions, which if preserved will add attractiveness and stability to the proposed development.

(7) **Lot Remnants.**

All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allowed to remain as unusable parcels.

(8) **Political Boundaries**

No lot shall extend over a political boundary or school district line.

7.5.4 Required Improvements.

No final plat shall be approved by the council without first receiving a report signed by the city engineer and the city attorney certifying that the improvements described therein together with the agreements and documents required under Section 9 of this Unified Development Ordinance meet the minimum requirements of all City codes. The following improvements shall be required of all new subdivisions unless a variance is granted:

(a) **Monuments**

Monuments shall be placed at all block corners, angle points, points of curves in streets and at intermediate points as shown on the final plat, location and size as determined by the city engineer. There shall be at least three concrete monuments installed per block. If the block is longer than 800 feet, there shall be four monuments. They shall be installed on the west and south sides of the street at the exterior corners and the remaining monuments equally dividing the distance between. Other monuments shall be steel or cast iron, as approved by the Hennepin County Surveyor and shall be set at each corner or angle on the outside boundary of all lots. Pipes or steel rods shall be placed at the corners of each lot and at each intersection of street centerlines. All U.S.,

state, county, or other official benchmarks, monuments, or triangulation stations in or adjacent to the property shall be preserved in precise position.

(b) **Water and Sewer Facilities.**

Sanitary sewers, storm sewers, and water distribution facilities shall be installed if connection to the City's sewer or water system is available. The city council may elect to install these facilities, assessing their cost against the subdivision. If provided by the subdivider, the improvements shall conform to specifications of the city engineer.

(c) **Public Street Grading.**

The full width of the right of way shall be graded, including the subgrade of the areas to be paved, in accordance with the standard plans prepared by the city engineer.

(d) **Public Street Improvements.**

(1) **Pavement Widths**

(2) Minimum pavement width for minor arterial and collector streets, as measured from face of curb to face of curb, shall be in accordance with the Comprehensive Plan. When not shown in the Comprehensive Plan, the minimum pavement width for minor arterial and collector streets shall be determined by the City Engineer based on anticipated traffic volume.

(3) Minimum pavement width for local streets, as measured from face of curb to face of curb, shall be as follows:

Classification	Minimum Width
Local Streets, Non-Residential	36 feet
Local Streets, Residential	30 feet
Marginal Access	26 feet

(4) **Cul-de-sacs**

All cul-de-sacs shall have turn-arounds, the pavement of which shall have a minimum diameter of 100 feet.

(5) **Curbs and gutters.**

(A) All street improvements shall be constructed in accordance with applicable standards specifications established by the city engineer.

(B) Storm water inlets and necessary culverts and dry wells shall be provided within the roadway improvements at points specified by the city engineer.

(C) All curb corners shall have a radii of not less than 15 feet except at collector and marginal access streets where they shall be not less than 25 feet.

(6) **Street Trees**

(A) Street trees having a trunk diameter (measure 12 inches above the ground) of not less than one and three-fourths inches shall be planted along all streets where trees do not exist, and not more than 75 feet and not less than 40 feet apart. This requirement will be satisfied, and it is preferable if an equivalent number of trees

of the same size exist or are planted in a naturalistic way in the front yards of the adjoining lots.

(B) Only ash, American elm and long-lived hardwood shade trees shall be planted. These shall be planted in at least one cubic yard of growing soil.

(7) **Name Signs.**

Street name signs shall be placed at all street intersections within or abutting the subdivision. Such signs shall be of a type approved by the City and shall be in accordance with standards of the City.

(8) **Boulevard Sod.**

Boulevard sod shall be installed from the street gutter line to the property line adjacent to all streets. This shall include any side yard boulevards.

(e) **Pedestrian Ways.**

Where pedestrian ways are installed, Portland cement concrete walks shall be constructed to a minimum width of five feet.

(f) **Public Utilities.**

(1) All the utility lines for telephone and electric service shall be placed in rear line easements when carried on overhead poles.

Commented [MT7]: To confirm

(2) Where telephone, electric and gas service lines are placed underground entirely throughout subdivided area, conduits or cables shall be placed within easement or dedicated public ways, in a manner which will not conflict with other underground service. Further transformer boxes shall be located so as not to be hazardous to the public. All drainage and underground utility installations which traverse privately owned property shall be protected by easements.

(3) When a drainage easement is provided and where proper drainage requires that such easement be brought to grade, such easement shall be graded in accordance with plans approved by the city engineer.

(4) **Election by City to Install Improvements.**

The City may, in its discretion, elect to install all or any part of the improvements required under the provisions of this Unified Development Ordinance in lieu of requiring the subdivider to install such improvements.

7-5.5 Required Agreements And Bonds.

Before a final plat is approved by the council, the owner and subdivider of the land covered by said plat shall execute and submit to the council an agreement to make and install within two years all improvements required to be installed by him under the provisions of this Unified Development Ordinance, in accordance with the plans and specifications therefor to be prepared by the city engineer. The agreement shall conform to standards set in Section 6.3.6.

7-5.6 Inspection At Subdivider's Expense.

All required land improvements to be installed under the provisions of this Unified Development Ordinance shall be inspected at the subdivider's expense during the course

of construction. Such inspection shall be by the city engineer or an inspector appointed by the city council.

7-5-7 Building Permit.

With the exception of condominium single family attached dwelling unit subdivisions, no building permits shall be issued by any governing official for the construction of any building, structure or improvement on any land required to be subdivided by this Unified Development Ordinance until all requirements of this Unified Development Ordinance have been fully complied with.

7.6 Planned Unit Developments

7.6.1 Preapplication Procedure.

(a) Preapplication Conference

Prior to filing an application for a PUD, the applicant must arrange for and attend a conference with city staff. The primary purpose of the conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of the proposal for the area for which it is proposed and its conformity to the provisions of this chapter before incurring substantial expense in the preparation of plans, surveys and other data. the applicant will work with city staff to determine a package of amenities commensurate with the scope of the proposed project. The approach should address one or more of the following topics:

- (1) Innovative environmental design
- (2) Affordable housing
- (3) Providing affordable commercial space
- (4) Local business use

(b) Preapplication sketch plan review.

- (1) Prior to filing a PUD application, the applicant is encouraged to submit a sketch plan of the project to the city. The submittal should include a statement providing justification for the PUD, including, but not limited to, the intended utilization of the items listed in the purpose, intent and criteria in this subdivision.

(c) Planning commission and city council review.

- (1) The Planning and Zoning Division shall refer the sketch plan to the planning commission and city council for discussion, review and informal comment. Any opinions or comments provided to the applicant by the planner, planning commission and city council shall be considered advisory only and shall not constitute a binding decision on the request. There shall be no official application made for a sketch plan. It is an informal review and comment by planning commission and city council.

7.6.2 Preliminary development plan.

- (a) Preliminary development plan submissions shall depict and outline the proposed implementation of the sketch plan for the PUD.
- (b) Submission of the development plan shall be made to the Director of Community Development and accompanied by such information and documentation as the City may deem necessary or convenient, Such information may be in a preliminary form but shall be sufficiently complete and accurate to allow an evaluation of the development by the City, The application shall include at a minimum the following:
 - (1) Street and utility locations and sizes;
 - (2) A drainage plan, including location and size of pipes and water storage areas;
 - (3) A grading plan, including temporary and permanent erosion control provisions;
 - (4) A landscape plan;
 - (5) A lighting plan;
 - (6) A plan for timing and phasing of the development;
 - (7) Covenants or other restrictions proposed for the regulation of the development;
 - (8) A site plan showing the location of all structures and parking areas;
 - (9) Building renderings or elevation drawings of all sides of all buildings to be constructed in at least the first phase of development; and
 - (10) Proposed underlying zoning classification or classifications.
- (c) The Planning Commission shall hold a public hearing on the development plan. Notice of such public hearing shall be published in the official newspaper and actual notice shall be mailed to the applicant and adjacent property owners as required by Section 6.1 of this Unified Development Ordinance. The Planning Commission shall review the development plan and make such recommendations as it deems appropriate regarding the plan within the time limits established by Section 6.3 of this Unified Development Ordinance.
- (d) Following receipt of the recommendations of the Planning Commission, the City Council shall hold a public hearing as it deems appropriate regarding the matter. The City Council shall act upon the development plan within the time limits established by Section 6.3 of this Unified Development Ordinance.
- (e) Approval of the development plan shall require rezoning of the property to PUD and conceptual approval of the elements of the plan. In addition to the guidelines provided in Section 7.3 of this Unified Development Ordinance, the City Council shall base its actions on the rezoning upon the following criteria:
 - (1) Compatibility of the plan with the standards, purposes and intent of this section;
 - (2) Consistency of the plan with the goals and policies of the Comprehensive Plan;
 - (3) The impact of the plan on the neighborhood in which it is to be located; and

- (4) The adequacy of internal site organization, uses, densities, circulation, parking facilities, public facilities, recreational areas, open spaces, and buffering and landscaping.
- (5) The City Council may attach such conditions to its approval as it may determine to be necessary to better accomplish the purposes of the PUD district.

7.6.3 Final PUD Development Plan

- (a) **Prior to construction on any site zoned PUD, the developer shall seek final plan approval pursuant to Section 6.3.2 of this Unified Development Ordinance. In addition to the information specifically required by Section 6.3.2, the developer shall submit such information as may be deemed necessary or convenient by the City to review the consistency of the proposed development with the approved development plan.**
 - (1) The plan submitted for approval pursuant to Section 6.3.2 shall be in substantial compliance with the approved development plan. Substantial compliance shall mean that buildings, parking areas and roads are in essentially the same location as previously approved; the number of dwelling units, if any, has not increased or decreased by more than 5 percent; the floor area of nonresidential areas has not been increased or decreased by more than 5 percent; no building has been increased in the number of floors; open space has not been decreased or altered from its original design or use, and lot coverage of any individual building has not been increased or decreased by more than 10 percent.
- (b) **Prior to construction on any site zoned PUD, the developer shall execute a development agreement in a form satisfactory to the City.**
- (c) **Applicants may combine development plan approval with the plan approval required by Section 6.3.2 by submitting all information required for both simultaneously.**
- (d) **After approval of the development plan and the plan approval required by Section 6.3.2, nothing shall be constructed on the site and no building permits shall be issued except in conformity with the approved plans.**
- (e) **If within 12 months following approval by the City Council of the development plan, no building permits have been obtained or, if within 12 months after the issuance of building permits no construction has commenced on the area approved for the PUD district, the City Council may initiate rezoning of the property.**

7.6.4 Amendments to an approved PUD final development plan.

Amendments to an approved PUD Development Plan shall be administered as follows:

- (a) **Minor Amendments.**
Minor amendments to a PUD final development plan are:

- (1) Landscape changes;
- (2) Parking lot configuration changes (not change in number of spaces);
- (3) Less than a ten (10) percent change in floor area in any one (1) structure;
- (4) Less than a ten (10) percent change in the approved separation of buildings;
- (5) Less than five (5) percent change in the ground area covered by the project;
- (6) Less than a five (5) percent change in the number of residential units; or
- (7) Less than a five (5) percent change in the number of parking spaces.

(b) Major Amendments. Major amendments to a PUD final development plan are:

- (1) Any decrease in the amount of approved open space;
- (2) More than a ten (10) percent change in floor area in any one (1) structure;
- (3) More than a ten (10) percent change in the approved separation of buildings;
- (4) Any change in the original approved setbacks from property lines;
- (5) More than five (5) percent change in the ground area covered by the project;
- (6) More than five (5) percent change in the number of parking spaces; or
- (7) The introduction of new uses not included in the PUD approval.

7.6.5 Review of minor amendments.

Proposed minor amendments (as specified in Subdivision 2 above) to a PUD Development Plan shall be reviewed and decided by the Zoning Administrator. Decisions of the Zoning Administrator may be appealed to the City Council. The Zoning Administrator may determine that a proposed 'minor' amendment is in fact a 'major' amendment and may refer such proposed amendments to the Planning Commission and Council according to the procedure established in Subd. 5, below. Application fees for a minor amendment to a PUD Development Plan are set forth in this Code.

7.6.6 Review of major amendments.

Any major amendment to a PUD development Plan shall be considered by the Planning Commission at a public hearing. The recommendation of the Planning Commission shall be considered by the City Council. Any major amendment shall require a majority vote of the Council.

7.6.7 Determining if the Underlying PUD District Must Be Rezoned.

Proposed amendments to a PUD Development Plan that would substantially change the use of the proposed development from one (1) zoning classification to another will require that the parcel in question be rezoned to the appropriate PUD district. Procedural requirements for a rezoning are set forth in Section 547.07. (Amended, Bill No. 2002-22 Classification of PUD Districts; Permitted Uses; Applicable Regulations.

- (a) Upon rezoning as a PUD, the district shall be designated by the letters "PUD" followed by the alphanumeric designation of the underlying zoning district which may be either the prior zoning classification or a new classification. In cases of mixed use PUDs, the City Council shall, whenever reasonably practicable, specify underlying zoning classifications for the various parts of the PUD. When it is not reasonably practicable to so specify underlying zoning classifications, the Council may rezone the district, or any part thereof, to PUD-MIXED."
- (b) Regulations governing uses and structures in PUDs shall be the same as those governing the underlying zoning district subject to the following:
 - (1) Regulations may be modified expressly by conditions imposed by the Council at the time of rezoning to PUD.
 - (2) Regulations are modified by implication only to the extent necessary to comply with the development plan of the PUD.
 - (3) In the case of districts rezoned to PUD-MIXED, the Council shall specify regulations applicable to uses and structures in various parts of the district.
- (c) For purposes of determining applicable regulations for uses or structures on land adjacent to or in the vicinity of the PUD district which depend on the zoning of the PUD district, the underlying zoning classification of PUD districts shall be deemed to be the zoning classification of the district. In the case of a district zoned PUD-MIXED, the underlying zoning classification shall be deemed to be the classification which allows as a permitted use any use which is permitted in the PUD district and which results in the most restrictive regulation of adjacent or nearby properties.

