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ARTICLE IV -- ZONING PROCEDURES

Section 4.00 AMENDMENTS:

The Salem Town Board may adopt, by a majority vote of all members of the Board, amendments to the zoning ordinance and to the official zoning map, which meet the goals and policies of the Township as reflected in the Comprehensive Plan or changes in conditions in the Township.

A. TYPES OF AMENDMENTS:

1. A change in district boundaries (re-zoning);
2. A change in district regulations;
3. A change in any other provision of this ordinance.

B. INITIATION OF PROCEEDINGS: This procedure for amending the zoning ordinance shall be initiated by at least one of the following three methods:

1. By petition of an owner or owners of property which is proposed to be re-zoned or for which district regulations changes are proposed;
2. By recommendation of the Planning and Zoning Commission (herein after called Commission);
3. By action of the Board.

C. AMENDMENT PROCEDURES-PROPERTY OWNERS: The procedures for a property owner to initiate an amendment to the ordinance are as follows:

1. The applicant shall obtain the application and necessary forms from the Salem Township Zoning Administrator.
2. The Zoning Administrator shall set a date for a public hearing at the next Commission meeting that would allow adequate time to publish the legal notices and the mailing of such notices to surrounding property owners in accordance with applicable Minnesota Statutes Section 395.26. Failure of any property owner or occupant to receive such notice shall not invalidate the proceedings, provided a bona-fide attempt to give such notice has been made. All amendments to this ordinance pertaining to the Floodway, Flood Fringe (FFA and FFB) and Flood Plain Districts shall be submitted to and

approved by the Commissioner of Natural Resources and the Federal Insurance Administration prior to their adoption.

3. The Commission shall hold a public hearing, adopt findings based upon the evidence established during the hearing and provide a recommendation to the Board.
4. The Board shall conduct a public hearing in accordance with Minnesota statutes, Section 394.26 and 375.51. The Board shall adopt findings and shall act upon the application.
5. No application of a property owner for an amendment to the text of this zoning ordinance or the Official Zoning Map shall be reconsidered by the Commission within the one (1) year period following denial by the Town Board of such request, except the Commission may permit a new application, if in the opinion of the Commission new evidence or a change of circumstances warrant it.

D. AMENDMENT PROCEDURES-PLANNING AND ZONING COMMISSION:

The procedures for the Planning and Zoning Commission to initiate a rezoning or amendment to this ordinance are as follows:

1. The Commission shall pass a motion recommending an amendment to this ordinance.
2. The Salem Township Zoning Administrator shall set a date for the public hearing before the Planning Advisory Commission in accordance with the public hearing requirements, Section 394.26 of the Minnesota Statutes. Failure of any property owner or occupant to receive such notice shall not invalidate the proceeding, provided a bona-fide attempt to give such notice has been made. Township wide amendments to this zoning ordinance need not be mailed to property owners or surrounding property owners affected by such an amendment.

All amendments to this zoning ordinance pertaining to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts shall be submitted to and approved by the Commissioner of Natural Resources prior to their adoption. Changes to the official Zoning Map pertaining to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts also require prior approval by the Federal Insurance Administration.

3. The Commission shall hold the public hearing, adopt findings based upon the evidence established during the hearing and provide a recommendation to the Board.

4. The Board shall conduct a public hearing in accordance with Minnesota Statutes, Sections 394.26 and 375.51. The Board shall adopt findings and act upon the application.

E. AMENDMENT PROCEDURES-TOWN BOARD OF SUPERVISORS: The procedure for the Town Board of Supervisors to initiate a rezoning or an amendment to the ordinance is as follows:

1. The Board shall pass a motion indicating their intent to amend this ordinance.
2. The Board shall submit the proposed amendment to the Commission for review and comment.
3. The remainder of the procedure is the same as those specified in Section 4.00 (D) (2-4).

F. AMENDMENT PROCEDURES: Sections 10.20 and 10.21: In addition to the procedures outlined above, any proposed amendment to the text addressing Section 10.20 and Section 10.21 shall be referred to the Olmsted County Soil and Water Conservation District Board for comment prior to action by the Commission or the Town Board initiating the amendment.

G. GENERAL DEVELOPMENT PLAN

1. **PURPOSE:** Salem Township considers vital the orderly, integrated, compatible development of the limited land area within the township. The Olmsted County General Land Use Plan establishes general land use policy. The zoning ordinance establishes detailed policies, regulations, and standards for specific areas of the township. General development plans are necessary to:
 - a. insure that the landowner and developer investigates the broad effects development of property will have on the site and also on adjacent properties and public infrastructure;
 - b. guide the future growth and development of those portions of the township identified for development in accordance with the land use plan;
 - c. protect the natural, social and economic character of the township by encouraging orderly development that assures appropriate timing and sequencing;

- d. ensure that public facilities and services are available concurrent with development and will have a sufficient capacity to serve the proposed development(s);
- e. prevent the pollution of water bodies and groundwater; assure the adequacy of drainage; and establish protection for and wise management of natural resources in the township;
- f. provide for open spaces through the efficient design and layout of the land;
- g. avoid and remedy the problems associated with improperly subdivided lands, including premature subdivision and scattered subdivision.

2. WHEN A GENERAL DEVELOPMENT PLAN (GDP) IS REQUIRED:

- a. A general development plan is required for any land use plan amendment, zone change, or subdivision of land requiring platting on land located within a Urban Service Area as identified in the Olmsted County Land Use Plan.
 - 1. A general development plan shall not be required for any portion of an area for which a general development plan has previously been approved by the Town Board.
 - 2. A general development plan may be waived by the Town Board based on the factors of subsection 2 (b) (1-6).
- b. In the review and approval of a proposed zoning district amendment in the Suburban Development Area, the Commission and the Town Board shall first determine whether a general land use plan shall be required, based on the following factors:
 - 1. consistency with the land use plan policies;
 - 2. the size of the subject property and parcels adjacent thereto;
 - 3. the potential for street, surface water runoff and drainage system and open space connections from the subject property to adjacent property, developed and undeveloped;
 - 4. the amount of undeveloped land in the vicinity and amount that borders the subject property; whether proposed development is infill development;

- 5. onsite and adjacent property site characteristics including flood plain, shorelands, public waters, bluff land, sand, public streets and street pattern;
 - 6. adjacency to the Rochester Urban Service Area;
 - 7. sufficiency of public facilities and services serving the proposed development area, and appropriate timing of and location of development.
- c. The Town Board shall have the authority to initiate a general development plan for a parcel or area located within the Rochester Urban Service Area or the Suburban Development Area as designated on the Olmsted County General Land Use Plan.
- 3. A GENERAL DEVELOPMENT PLAN SHALL BE ACTED ON SEPARATELY by the Salem Town Board and the Commission in accordance with the procedures of Section 4.00 Amendments. A General Development Plan and zoning map amendment may be reviewed at the same time in the hearing process. The action taken must be by separate motion of the Commission and the Town Board.**
- 4. A GENERAL DEVELOPMENT PLAN SHOULD INCLUDE:**
- a. all current parcels proposed for subdivision and development under the rezoning;
 - b. all other parcels abutting the property proposed for rezoning or within one half mile of the boundaries of the property proposed for rezoning located within the urban service area, urban reserve area or the suburban development area as delineated on the land use plan;
 - c. all adjacent lands under the same ownership as the owner or applicant proposing the rezoning; and,
 - d. all parcels needed to provide access to public roads.
- 5. THE FOLLOWING PHYSICAL AND PLANNING FACTORS SHOULD BE ADDRESSED IN A GENERAL DEVELOPMENT PLAN:**
- a. existing and proposed land uses, densities, and general lot sizes and location;
 - b. transportation and other infrastructure systems internal to the planning area, including the street pattern and connections to the

external street network and shared water supply and sewage treatment systems;

- c. the surface water drainage systems;
- d. the open space system that may include natural resource lands unique habitat, sensitive lands (shorelands, wetlands, flood plain, steep slopes, sinkhole concentrations and other features dependent on the site); and,
- e. the schedule for development of infrastructure.

6. IN THE REVIEW OF A GENERAL DEVELOPMENT PLAN, THE COMMISSION AND THE TOWN BOARD OF COMMISSIONERS SHALL MAKE FINDINGS indicating that:

- a. proposed land uses are in accordance with the Olmsted County General Land Use Plan and zoning map;
- b. the street pattern is appropriate to serve properties under construction;
- c. the proposal makes provision for planned capital improvements and streets based on the county capital improvement plan and Thoroughfare Plan;
- d. the proposal makes adequate provisions for surface water, drainage, soil erosion control, water supply and sewage treatment, consistent with State law and rule and County or Township ordinance;
- e. the lot, block and street layout is consistent with the General Land Use Plan use, development and resource management policy, and subdivision design principles;
- f. unique natural resource features and sensitive areas are protected through the open space provisions and appropriate lot layout;
- g. development will occur in an orderly fashion; and
- h. connecting roads are adequate to handle projected traffic, or provision has been made to correct deficiencies.

H. AMENDMENT FINDINGS:

1. The proposal is consistent with the policies of the Salem Township General Land Use Plan;
2. The amendment is in the public interest;
3. The proposed development is timely based on surrounding land uses, proximity to development, and the availability and adequacy of infrastructure;
4. The proposal permits land uses within the proposed district that are appropriate on the property and compatible with adjacent uses and the neighborhood;
5. The proposal does not result in spot zoning;
6. The proposal is consistent with a General Development Plan for the area, if one exists.

Section 4.02 CONDITIONAL USE

The purpose of a conditional use is to permit a use that would not be appropriate generally but may be allowed with appropriate restrictions upon a finding that 1) certain conditions as detailed in the zoning ordinance exist, and 2) the use or development conforms to the Comprehensive Plan, and 3) is compatible with the existing area.

A conditional use is allowed only after a petition for a permit has been approved by the Planning Advisory Commission, except when there is an appeal to the Commission decision; then, only after the approval of the Township Board of Commissioners.

A. Criteria for Granting Conditional Uses: In granting a conditional use, the Planning Advisory Commission shall consider the effect of the proposed use on the Comprehensive Plan and upon the health, safety and general welfare of occupants of surrounding lands. Among other things, the Commissioner shall consider the following:

1. The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of such property;
2. The proposed use will not impede the normal and orderly development and improvements of the surrounding property;
3. Adequate utilities, parking, drainage and other necessary facilities will be provided;

4. Adequate ingress and egress will be provided to minimize traffic congestion in the public streets;
5. Based on a transportation impact analysis, if required under Section 10.48 of this Ordinance, or (if the requirement for a transportation impact analysis has been waived) considering the recommendation of the responsible road authority engineer as defined in that Section, either
 - the traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County or other affected jurisdictions in order to handle the additional traffic generated by the use; or
 - a road use agreement has been entered into specifying responsibility for improving and maintaining the roads of affected jurisdictions including remediation of damaged roads and specification of designated haul routes to limit truck traffic to structurally adequate corridors;
6. Adequate measure have been taken or proposed to prevent or control offensive odor, fumes, dust, noise, vibration, or lighting, which would otherwise disturb the use of neighboring property;
7. The special criteria or requirements indicated in Article X, General Regulations are complied with;
8. The water and sanitary systems are or would be adequate to prevent disease, contamination and unsanitary conditions.

When deciding on conditional uses to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts, the following additional factors shall also be considered:

9. The danger to life and property due to increased flood heights or velocities caused by encroachments.
10. The danger that materials may be swept onto other lands or downstream to the injury of others.
11. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
12. The relationship of the proposed use to the flood plain management program for the area.
13. The safety of access to the property in times of flood for ordinary and emergency vehicles.

14. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
15. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
16. The importance of the services provided by the proposed facility to the community.
17. The requirements of the facility for a waterfront location.
18. The availability of alternative locations not subject to flooding for the proposed use.
19. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
20. Based upon technical evaluation of the designated engineer or expert, the Planning Commission shall determine the specific flood hazard at the site and evaluate the suitability of the proposed use in relation to the flood hazard.

When deciding on a conditional use to the A-1, A-2, and A-4 Agricultural Districts, the following additional factors shall be considered.

21. The amount of prime agricultural land with a crop equivalent rating of 60 or above that would be taken out of production as a result of the use.
22. The need for new public roads or the need for improvement to existing public roads is minimal.
23. A thorough evaluation of the waterbody and topographic, vegetation, and soil conditions on the site must be made to ensure:
 - a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - b. The visibility of structures and other facilities as viewed from public waters is limited;
 - c. The site is adequate for water supply and on-site sewage treatment; and
 - d. The types, uses and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.

B. ADDITIONAL CONDITIONS: In permitting a new conditional use or the alteration of an existing conditional use, the Planning Advisory Commission may impose, in addition to those standards and requirements expressly specified by this ordinance, additional conditions which the Planning Advisory Commission considers necessary to protect the best interest of the surrounding area or the Township as a whole. These conditions may include, but are not limited to the following:

1. Increasing the required lot size or yard dimension.
2. Limiting the height, size or location of buildings.
3. Controlling the location and number of vehicle access points.
4. Increasing the street width.
5. Increasing the number of required off- street parking spaces.
6. Limiting the number, size, location or lighting of signs.
7. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
8. Designating sites for open space.
9. Limiting the hours of operation.
10. Limiting the length of time for which the conditional use may exist.
11. Increased setbacks from the ordinary high water level.
12. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted.
13. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

C. REQUIRED EXHIBITS: The following exhibits shall be required unless waived by the Salem Township Administrator.

1. A completed application form.
2. An accurate boundary description of the property.

3. A development plan of the property showing the existing or proposed buildings, streets, access roads, driveways, parking spaces and signs.
4. Landscaping and screening plans
5. Drainage plan.

Conditional uses pertaining to the Floodway, Flood Fringe (FFA and FFB) and Flood Plain Districts, Section 9.02, 9.04, 9.06, and 9.08 shall, in addition to the previous exhibits, require the following:

6. Plans in triplicate drawn to scale showing the nature, location, dimensions and elevations of the lots, existing or proposed fill, storage of materials, flood proofing measures and the relationship of the above to the location of the stream channel.
7. Specifications for building construction, and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
8. Any additional information deemed necessary by the Planning Advisory Commission to determine the suitability of the particular site for the proposed use.
9. State and Federal Permits. Prior to granting a permit or processing an application for a Conditional Use Permit the Salem Township Zoning Administration shall determine that the applicant has obtained all necessary State and Federal Permits.

D. CONDITIONAL USE PROCEDURES: The procedures for a property owner to obtain a conditional use are as follows:

1. The applicant shall obtain the application and necessary forms from the Zoning Administrator.
2. The applicant shall return the application to the Zoning Administrator along with the required exhibits and pay the fee established by the Board for processing the conditional use procedures (See Appendix A).
3. Prior to the processing of the application for a conditional use pertaining to the Floodway, Flood Fringe (FFA and FFB) and Flood Plain Districts, the Salem Township Zoning Administrator shall determine that the applicant has obtained the necessary state and federal permits pertaining to flood proofing and flood protection measures.

If the conditional use is with respect to either the Floodway, Flood Fringe (FFA and FFB) or the Flood Plain Districts, the Salem Township Zoning Administrator shall transmit one (1) set of plans to a designated engineer or other expert person or agency acceptable to the township for technical assistance in evaluating the proposed project in relation to the flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protections and other matters.

In addition, the Salem Township Zoning Administrator shall submit by mail to the Commission of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.

- a. Upon receipt of an application for a Conditional Use Permit for a use within the General Flood Plain District, the applicant shall be required to furnish such of the following information as is deemed necessary by the Salem Township Zoning Administrator for the determination of the Regulatory Flood Protection Elevation and whether the proposed use is within the Floodway or Flood Fringe District.
 - 1) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information.
 - 2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, photographs showing existing land uses and vegetation upstream and downstream; and soil type.
 - 3) Profile showing the slope of the bottom of the channel and flow line of the stream for at least 500 feet in either direction from the proposed development.
- b. The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the Floodway or Flood Fringe District and to determine the Regulatory Flood Protection Elevation. Procedure consistent with Minnesota Regulation 1983, Parts 6120.5000- 6120.6200 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective Department of Natural Resources Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - 1) Estimate the peak discharge of the regional flood.

- 2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and over bank areas.
 - 3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase that .5' shall be required if, as a result of an additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries.
- c. The Salem Township Zoning Administrator shall present the technical evaluation and findings of the designated engineer or expert to the Planning Advisory Commission. The Commission must formally accept the technical evaluation and the recommended Floodway and/or Flood Fringe District Boundary or deny the permit application. The Planning Commission, prior to official action, may submit the application and all supporting data and analysis to the Federal Emergency Management Agency and the Department of Natural Resources for review and comment. Once the Floodway and Flood Fringe Boundaries have been determined, the permit application may be processed.
4. The Salem Township Zoning Administrator shall set a date for the public hearing before the Planning Advisory Commission in accordance with the public hearing requirements in Minnesota Statutes, Section 394.26. Failure of any property owner or occupant to receive such notice shall not invalidate the proceeding, providing a bona-fide attempt to give such notice has been made.
 5. The Commission shall hold the public hearing. The Commission shall adopt findings based upon the evidence established during the hearing. Appeals from the decision of the Commission can be made to the Salem Township Board.
 6. The Commission's decision granting the conditional use with respect to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain districts shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
 7. The Zoning Administrator shall transmit a certified copy of an approved conditional use permit, along with the legal description of the property, to the County Recorder for recording, except when the Commission's decision is being appealed.

8. A conditional use permit shall remain in effect for so long as the conditions of the permit are observed and complied with.
9. No application for conditional use shall be reconsidered by the Commission within the one (1) year period following a denial of such request, except the Commission may permit a new application if, in the opinion of the Commission, new evidence or a change of circumstances warrant it.
10. Should no construction or use begin within one (1) year from the date of the approval, or should the approved conditional use be discontinued for a period of one (1) year, the conditional use shall be void.

Section 4.04 APPEAL OF A PLANNING ADVISORY COMMISSION DECISION:

A decision of the Planning Advisory Commission may be appealed to the Township Board of Commissioners. Such appeal may be taken by a person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state. Should a zoning certificate or building permit have been issued as a result of the Commission's decision, such permit shall be suspended until the Township Board has rendered a decision on the appeal.

A. APPEAL PROCEDURES:

1. The appeal application shall be submitted to the Salem Township Zoning Administrator within ten (10) days of the Commission's decision and the appellant shall pay the fee for the appeal as established by the Township Board of Commissioners (See Appendix A).
2. Within sixty (60) days after receipt of the appeal application, the Board shall hold a public hearing in accordance with Minnesota Statutes, Section 394.26. The Board shall adopt findings and shall act upon the appeal within sixty (60) days of the Board's scheduled public hearing date.
3. A decision of the Board granting the conditional use pertaining to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
4. A certified copy of an approved conditional use, along with the legal description of the property, shall be transmitted to the County Recorder for recording.

Section 4.06 APPEAL OF THE SALEM TOWNSHP ZONING ADMINISTRATOR'S DECISION:

A decision of the Salem Township Zoning Administrator or any administrative official charged with enforcing this zoning ordinance may be appealed to the Board of Adjustment. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state. An appeal stays all proceeding of action in accordance with Minnesota Statutes Section 394.27.

A. APPEAL PROCEDURE:

1. The appeal application shall be submitted to the Salem Township Zoning Administrator within ten (10) days of the Salem Township Zoning Administrator or administrative official's decision. The appellant shall pay the fee for processing the appeal as established by the Township Board of Commissioners (See Appendix A).
2. The Salem Township Board of Adjustment shall hold a public hearing and notify the appellant, the official from whom the appeal is taken, and the public in accordance with Minnesota Statutes, Section 394.27. The Salem Township Board of Adjustment shall adopt findings supporting their decision.

Section 4.08 VARIANCES:

A variance from a provision of this zoning ordinance may be granted by the Board of Adjustment in a case in which the zoning ordinance is found to impose particular hardship to a property owner and that there are exceptional circumstances or conditions applying to the intended use of the property in question that do not apply generally to other similar properties in the same zoning district. The Board of Adjustment may not permit as a variance any use that is not permitted for the property in the district where the affected person's land is located.

A. CRITERIA FOR GRANTING A VARIANCE: When considering an application for an Area Variance, the Board must determine if the request will result in a practical difficulty and the following factors shall be considered:

1. That they are exceptional and extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district;
2. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this zoning ordinance or the public interest;
3. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation and that the alternative of consideration of a map amendment changing the zoning district classification would be impractical.

5. Whether the request will have an adverse effect on government services.
6. Whether the requested variance will cause a substantial change in the character of the neighborhood or will result in a substantial detriment to neighboring properties
7. Whether there is another feasible method to alleviate the need for the variance (economic considerations play a role in the analysis under this factor)
8. How the practical difficulty occurred including whether the landowner created the need for the variance.
9. Whether in light of all the above factors, allowing the variance would serve the interest of justice.

B. CRITERIA FOR GRANTING A USE VARIANCE: A use Variance may be granted only in the event that the Board of Adjustment finds that the limitations on uses in the zoning district applicable to the site cause particular hardship to the property owner and finds evidence that all the following facts and conditions exist:

1. That there are exceptional and extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.
2. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same district and in the same vicinity. The possibility of increased financial return shall not in itself be deemed sufficient to warrant a variance.
3. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this zoning ordinance or the public interest.
4. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation and that the alternative of consideration of a map amendment changing the zoning district classification would be impractical.
5. That the variance requested is the minimum variance which would alleviate the hardship.

If a variance is being applied for after the development has occurred, refer to subsection E for additional criteria relating to After-the-fact Variances.

C. VARIANCES IN A FLOODWAY: When deciding a variance pertaining to Sections 9.02, 9.04, 9.06, and 9.08 Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts, once the appropriate user/area variance criteria set forth above have been considered, the following additional factors shall be considered:

1. That the granting of such variance will not increase flood heights, create additional threats to public safety, necessitate extraordinary public expense, create nuisances, or increase the threat of damage to property or the environment from the volume or velocity of runoff.

If a flood plain variance is being applied for after the development has occurred, refer to subsection E for additional criteria relating to After-the-fact Variances.

D. Variances in Shoreland District: When deciding a variance to the Shoreland District regulations, once the appropriate use/area variance criteria set forth above have been considered, the following additional factors shall be considered:

1. Except as provided for in the section on use variances, no variance to the standards of the shoreland district shall have the effect of allowing in any district uses prohibited in that district.
2. No variance in the shoreland district shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area.
3. No variance in the shoreland district shall permit standards lower than those required by State law.
4. In areas where development exists on both sides of a proposed building site, water and road setbacks may be varied to conform to the existing established setbacks.
5. In areas of unusual topography or substantial elevation above the lake level, the water setback may be varied to allow a riparian owner reasonable use and enjoyment of his property.
6. Where homes incorporate a method of sewage disposal other than soil absorption, water setbacks may be reduced by one-third (1/3).
7. For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require

reconstruction of a nonconforming sewage treatment system.

If a shoreland variance is being applied for after the development has occurred, refer to subsection E. for additional criteria relating to After-the-fact Variances.

E. AFTER-THE-FACT VARIANCES: If a property owner seeks a variance after the development at issue has already been completed, this is known as an “after-the-fact” variance request. In that event, once the appropriate use/area variance criteria set forth above have been considered, the following additional criteria must be considered by the Board in deciding whether or not to grant the variance request:

1. Whether the property owner acted in good faith;
2. Whether the property owner attempted to comply with the law by obtaining a building permit;
3. Whether the property owner obtained a permit from another entity that violated the law;
4. Whether the property owner made a substantial investment in the property;
5. Whether the property owner completed the repairs/construction before the property owner was informed of the impropriety;
6. Whether the nature of property is residential/recreational and not commercial;
7. If lakefront property, whether there are other similar structures on the lake;
8. Whether the minimum benefits to the county appear to be far outweighed by the detriment the appellant would suffer if forced to remove the structure.
9. Whether in light of all of the above factors, allowing the variance would serve the interests of justice.

After-the-fact variances have the potential to encourage property owners to intentionally violate the zoning ordinances. Property owners who seek after-the-fact variances must prove the facts underlying each of these criteria by clear and convincing evidence. If in the judgment of the Board of Adjustment an applicant for a variance has acted in bad faith, or has intentionally or neglectfully violated the zoning ordinance, the Board of Adjustment shall deny the requested variance.

F. VARIANCE PROCEDURES: The procedures for a property owner to obtain a variance are as follows:

1. The applicant shall obtain the application and necessary forms from the Salem Township Zoning Administrator.

2. The applicant shall return the application and necessary forms to the Salem Township Zoning Administrator along with the required exhibits and pay the fee established by the Board. (See Appendix A).
3. Whenever the variance is related to provisions of the Floodway, Flood Fringe (FFA and FFB) and Flood Plain Districts, the Salem Township Zoning Administrator shall submit to the Commissioner of Natural Resources a copy of all applications for variances so that the Commissioner receives at least ten (10) days notice of the hearing.

The Salem Township Zoning Administrator shall notify the applicant in writing that:

- a. The issuance of a variance to construct a structure below the base of flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - b. Such construction below the flood protection elevation increases risks to life and property.
4. The Salem Township Zoning Administrator shall set a date for the public hearing before the Board of Adjustment in accordance with the public hearing requirements, Minnesota Statutes Section 394.26. Failure of any property owner or occupant to receive such notice shall not invalidate the proceeding, provided a bona-fide attempt to give such notice has been made.
 5. The Board of Adjustment shall hold the public hearing. The Board of Adjustment shall table further action on any application, which is not accompanied by a recommendation of the township. The tabling shall be until such time as a recommendation is received, but not to exceed thirty-five (35) days. Failure of the township to act upon the application within thirty five (35) days of the Board's action tabling the request shall cause the township to forfeit its opportunity to comment on said application. The Board of Adjustment shall adopt findings based upon the evidence established during the hearing and shall act upon the variance.
 6. A certified copy of the approved variance shall be mailed to the petitioner.
 7. A certified copy of an approved variance, along with the legal description of the property, shall be transmitted to the County Recorder for recording.
 8. The Board of Adjustment's decision granting the variance to the Floodway, Flood Fringe (FFA and FFB), Flood Plain District and Shoreland District must be sent to the Commissioner or the Commissioner's designated representative and postmarked within at least ten (10) days of the public hearing.

9. The Salem Township Zoning Administrator shall submit a copy of the decisions and summary of the public record/testimony and the findings of fact and conclusions for the Board of Adjustment's decision postmarked with ten (10) days of the decision.

G. REQUIRED EXHIBITS: The following exhibits shall be required unless waived by the Zoning Administrator:

1. A completed application form.
2. An accurate boundary survey and site plan.

Section 4.10 TEMPORARY CONSTRUCTION PERMITS:

The temporary use of property, in any district, for use customarily incidental to the construction of roads, buildings, utilities, or public projects may be allowed upon approval of a zoning certificate in the form of a temporary and revocable permit for not more than a 90-day period by the Salem Township Zoning Administrator and the Salem Town Board. The Salem Township Zoning Administrator shall attach those conditions which will safeguard the public health, safety and general welfare. The renewal of said permit or request for a permit exceeding 90 days shall require the approval of a conditional use permit by the Planning Advisory Commission. The Commission shall determine the duration of the permit, not to exceed 12 months, and shall attach those conditions, which will safeguard the public health, safety and general welfare. Issuance of a permit shall be subject to, but not limited to the following conditions:

- A. Reclamation of property to an acceptable condition;
- B. Reclamation of property prior to expiration date of permit;
- C. Performance bond posted with County Public Works Department or Township Treasurer;
- D. Show of evidence of valid state and federal permits as required;
- E. Provide traffic safety devices in proximity of operation;
- F. Approval of the Olmsted County Health Department.