

**CITY OF CREDIT RIVER  
SCOTT COUNTY  
STATE OF MINNESOTA**

**ORDINANCE NO. 2021-06**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE RELATED TO THE  
BOARD OF ADJUSTMENTS AND CITY STATUS**

**The City Council of Credit River, Minnesota ordains:**

**SECTION 1. RESCIND AND REPLACE SECTION.** Sections 2-2 and 203 of the Credit River Zoning Ordinance is hereby rescinded and a new Section 2-2 and 2-3 are added as follows:

**2-2 BOARD OF ADJUSTMENT**

**2-2-1 Creation and Membership**

The City Council shall serve as the "governing body" and "board of appeals and adjustments" for purposes of Minnesota Statutes §§ 462.357 and 462.358. The City Council shall have all of the powers contained in Minnesota Statutes §§ 462.351 to 462.364.

**2-2-2 Duties and Responsibilities**

The Board of Adjustment shall act upon all questions as they may arise in the administration of this Ordinance, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirements, decision, or determination made by any administrative official charged with enforcing the Ordinance. Such appeal may be made by any person, firm, or corporation aggrieved; or by any officer, department, board of a town, municipality, county, or state.

An appeal must be made in writing within 30 calendar days of the decision being appealed. Hearings by the Board of Adjustment shall be held within such time and upon such notice to interested parties in conformance with state law. Legal notice shall be published in the official newspaper of the City at least ten (10) days prior to the hearing. An appeal stays all proceedings in furtherance of the action appealed from unless the Board of Adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property.

The Board of Adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all powers of the officer to whom the appeal was taken and direct the issuance of a permit. The reasons for the Board's decision shall be stated in writing.

The Board of Adjustment shall have the exclusive power to order issuance of variances from the requirements of any official control including restrictions placed on non-conformities. Variances

shall only be permitted when they are in harmony with the general purpose and intent of the official control and when the variances are consistent with the Comprehensive Plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties" as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in Minnesota State Statute 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

## **2-3 VARIANCES**

### **2-3-1 Criteria for Granting Variances**

A variance from the provisions of the Zoning Ordinance may be issued to provide relief to the landowner where the Ordinance imposes practical difficulties to the property owner in the reasonable use of this land. No use variances may be issued.

A Variance may be granted only where practical difficulties exist and upon making the following findings:

1. Granting of the variance will not be in conflict with the Comprehensive Plan.
2. Exceptional, unique, or extraordinary circumstances apply to the property which do not generally apply to other properties in the same zoning district or vicinity, and result from lot size or shape, topography, or other circumstances over which the owners of property since the enactment of this Ordinance have had no control.
3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
4. That the special conditions or circumstances do not result from the actions of the applicant.
5. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district.

6. The variance requested is the minimum variance which would alleviate the practical difficulty.
7. The variance would not be materially detrimental or will not essentially alter the character of the property in the same zoning district.
8. Economic considerations alone do not constitute practical difficulties.

### **2-3-2 Procedure**

1. Pre-Application Meeting. Prior to submission of a variance application, the property owner may submit a concept plan and meet with the Zoning Administrator to discuss the variance application. Through the pre-application, the Zoning Administrator will summarize the informational requirements and issues related to the specific variance request. A second pre-application meeting may be conducted if deemed warranted to assist the applicant in preparing their application.
2. The property owner applying for a variance shall submit to the Zoning Administrator a completed variance application stating the practical difficulties that are present, and provide all other information required by the Zoning Administrator. The application shall be completed when the applicant has complied with the following requirements:
  - a. A written and/or graphic description of the variance request including an explanation of how the variance requested meets the findings in Section 2-3-1 of this Ordinance. The application shall include a site plan consistent with Section 2-10-3 of this Ordinance.
  - b. Supporting information described by the Zoning Administrator during the pre-application meeting and required in other sections of this Ordinance.
  - c. Applications must be accompanied by a fee established by the City.
3. The Zoning Administrator, upon receipt of the application, shall notify the applicant in writing within fifteen (15) business days or as amended by Minnesota Statutes Chapter 15.99 if the application is found to be incomplete.
4. Upon receipt of a complete application, the Zoning Administrator shall prepare a report and refer the application to the Board of Adjustment.
5. The Planning Commission shall hold a public hearing on the request. Notice of the public hearing shall be published in the official newspaper designated by the City Council at least ten (10) days prior to the hearing. Property owners of record within three hundred fifty (350) feet of the subject property shall be notified in writing of the proposed variance. Timing of the mailed notice shall be the same as that for

the published notice. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply has been made.

6. The applicant or his representative shall appear before the Planning Commission in order to answer questions concerning the proposed variance.
7. The Planning Commission and Zoning Administrator shall have the authority to request additional information from the applicant concerning a variance. Said information is to be declared necessary to establish performance conditions in relation to all pertinent sections of this Ordinance. Failure of the applicant to supply all necessary supportive information may be grounds for denial of the request.
8. The Planning Commission shall make a recommendation on the variance to the Board of Adjustment. The Board of Adjustment shall act upon the request within the time permitted by Minnesota Statutes 15.99, as amended.
9. A certified copy of any order issued by the Board of Adjustment acting upon an appeal from an order, requirement, or decision or determination by an administrative official, or a request for a variance, shall be filed with the Office of the County Recorder or Registrar of Titles. The order issued by the Board of Adjustment shall include the legal description of the property involved. The Zoning Administrator shall be responsible for the document recording requirements of this Section and shall maintain records of the variance request.
10. All decisions by the Board of Adjustment in granting variances or 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 thirty (30) days, after receipt of notice of the decision, to the District Court in Scott County on questions of law and fact.
11. A variance shall expire one (1) year from the date of issuance if the variance is not utilized. No application for a variance shall be resubmitted for a period of six (6) months from the date of an order of denial.
12. If necessary, an extension of a variance shall be requested in writing and filed with the Zoning Administrator at least thirty (30) days before the expiration date of the original variance. The request for extension shall state facts showing a good faith attempt to utilize the variance in the allowed one (1) year. The Zoning Administrator shall forward the request to the Board of Adjustment. The applicant shall be informed of the decision within the time permitted by State Law. No extension shall be for more than one (1) year, after which if the variance is not utilized the variance would become void. In no case shall more than one variance extension be approved for an individual variance request.

**SECTION 2. UPDATE ZONING ORDINANCE TO REFLECT CHANGE TO CITY.**

Staff is authorized to update the entirety of the codified Zoning Ordinance to reflect changes warranted due to the change to a city, including but not limited to the following:

- Change “Town Board” to “City Council”
- Change “Town Clerk/Engineer/Planner” to “City Clerk/Engineer/Planner”
- Change “Chairman” to “Mayor”
- “Town” to “City”

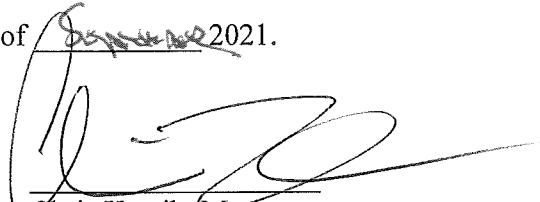
**SECTION 3. EFFECTIVE DATE**

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

**SECTION 4. REPEALER**

All prior ordinances to the extent that they are inconsistent with the terms and provisions of this Ordinance, shall be deemed repealed after the effective date of this Ordinance with regard to those inconsistent terms and provisions.

Passed by the City Council of Credit River this 20<sup>th</sup> day of September 2021.



Chris Kostik, Mayor

Attested:



Karen Donovan, City Clerk