

City of South St. Paul
Dakota County, Minnesota

Ordinance No. 1325

**AN ORDINANCE AMENDING SECTIONS 118-39, 118-40, 118-41 AND 118-42
REGARDING CERTAIN PLANNING APPLICATIONS**

The City Council of the City of South St. Paul does ordain:

SECTION 1. AMENDMENT. South St. Paul City Code Section 118-39, 118-40, 118-41 and 118-42 are hereby amended as follows:

Sec. 118-39. - Variances.

(a) *Application.* Any owner of property, a person, firm, association, or corporation holding a contract to purchase property, an optionee holding an option conditioned solely on the grant of a variance, or the duly authorized agent of such person, may make application for a variance, which shall include the written consent of the fee owner. The application shall be made on forms supplied by the city and filed with the city ~~engineer~~planner. The application shall contain the following:

- (1) The legal description of the property;
- (2) The zoning district in which the property is located;
- (3) A brief statement of the reasons the variance is requested; and
- (4) A statement of the ownership interest therein of the applicant.

(b) *Variances prohibited.* No variance may be granted for a use of any property different from that permitted by this chapter. Variances may be granted for the extension of the nonconforming use of a property that was nonconforming on the date of the adoption of this chapter and such nonconforming use or any extension thereof shall not have expired.

~~(c) *Termination.* The violation of any condition in the grant of the variance shall terminate the variance. If the property is not used or improvements substantially begun within a period of one year after the decision granting the variance, the variance shall terminate, and the city engineer shall notify the owner of the termination thereof. The owner, in the event of any such variance termination, shall have the right of appeal as set forth in this chapter.~~

~~(d) *Standards for granting of a variance.* A variance may only be granted when:~~

- ~~(1) The variance is in harmony with the general purpose and intent of the ordinance;~~
- ~~(2) The terms of the variance are consistent with the comprehensive plan; and~~

~~(3) The applicant for the variance establishes that there are practical difficulties in complying with the ordinance.~~

~~(e) *Practical difficulties.* Economic considerations alone do not constitute practical difficulties. “Practical difficulties” as used in connection with the granting of a variance means that:~~

~~(1) The property owner proposes to utilize the property in a reasonable manner;~~

~~(2) The plight of the property owner is due to circumstances unique to the property that were not created by the property owner; and~~

~~(3) The variance will not alter the essential character of the neighborhood.~~

~~(f) *Conditions.* The city may attach such conditions to the granting of a variance as it shall determine necessary or desirable to bring it within the purpose and intent of this chapter. A public record shall be maintained of such conditions.~~

~~(g)~~(c) *Procedures.*

(1) All applications for a variance shall be referred to the planning commission for ~~a public hearing, study, its review~~ and recommendation to the city council, and property owners within 350 feet of the property in question shall be notified by mail of the hearing date and time, although failure of any property owner to receive such notification shall not invalidate the proceedings. Either the planning commission or the city council shall hold a public hearing on the application. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the public hearing.

(2) The planning commission shall make written findings of the practical difficulties, and shall forward its recommendation to the city council; if no recommendation is transmitted after referral of the application ~~for a variance~~ to the planning commission, the city council may take action without such recommendation.

(3) Variances shall be granted or denied by resolution of the city council.

(d) *Standards for granting a variance.* A variance may only be granted when:

(1) The variance is in harmony with the general purpose and intent of the ordinance;

(2) The terms of the variance are consistent with the comprehensive plan; and

(3) The applicant for the variance establishes that there are practical difficulties in complying with the ordinance. Economic considerations alone do not constitute practical difficulties. “Practical difficulties” as used in connection with the granting of a variance means that:

i. The property owner proposes to utilize the property in a reasonable manner;

ii. The plight of the property owner is due to circumstances unique to the property that were not created by the property owner; and

iii. The variance will not alter the essential character of the neighborhood.

(e) Conditions. The city may attach such reasonable conditions to the granting of a variance as it shall determine necessary or desirable to bring it within the purpose and intent of this chapter.

(f) Termination. The violation of any condition in the grant of the variance may terminate the variance, following a hearing by the city council. If the property is not used or improvements substantially begun within a period of one year after the decision granting the variance, the variance shall terminate, and the city planner shall notify the owner of the termination thereof. The owner, in the event of any such termination, shall have the right of appeal as set forth in this chapter.

Sec. 118-40. - Conditional use permits.

(a) *Purpose and public policy.* In the enactment of this chapter, the city recognizes that there are certain uses that, because of their characteristics, limited number, or unique character, cannot be classified into any particular district or districts without providing extensive regulatory provisions. It is also recognized that certain uses, while generally not suitable in a particular zoning district, may, under some circumstances and conditions, be suitable. A conditional use permit shall apply to the use of land and not to a particular person. Any change in land ownership, lease, rental, occupancy or other similar change shall not affect the conditional use permit or its ~~conditions except as may be specifically authorized and required by the city council.~~ The provision for conditional use permits is, therefore, established in order that the regulations of the city with respect to zoning may be continued on an individual basis as follows:

- (1) In situations where this Code specifically provides for the use ~~upon the issuance of~~by a conditional use permit.
- (2) In the instances where the particular use sought is not or cannot by a reasonable interpretation thereof be brought within the purview of this chapter in any district provided therein.
- (3) To provide for government use and uses that are traditionally considered to be affected with a public interest.

~~(4) Any use requiring a conditional use permit under terms of this chapter legally existing at the time of adoption shall be automatically granted a conditional use permit. Such uses shall be exempt from subsections (e) through (f) of this section, and the application fee shall be waived.~~

- (5) If a use is listed as both a permitted and a conditional use in this chapter, the more restrictive provisions shall apply.

- (6) The city may deny issuance of any conditional use permit not in conformity to the basis and criteria for granting such permits.

(b) Application. Any owner of property, a person, firm, association, or corporation holding a contract to purchase property, an optionee holding an option conditioned solely on the grant of a variance, or the duly authorized agent of such person, may make application for a variance, which shall include the written consent of the fee owner. The application shall be made on forms supplied by the city and filed with the city planner. The application shall contain the following:

- (1) The legal description of the property;
- (2) The zoning district in which the property is located and the section number of this chapter which permits the issuance of the conditional use permit;
- (3) A brief statement describing the use and why the applicant believes that it can be allowed under this chapter; and
- (4) A statement of the ownership interest therein of the applicant.

~~Any owner of property, or a person, firm, association or corporation holding a contract to purchase property, or an optionee holding an option conditioned solely on the grant of a conditional use permit may apply. The application shall be made on forms provided by the city and filed with the city engineer and shall include the written consent of the fee owner. The application shall set forth the legal description of the property, the zoning district in which it is located, the section number of this chapter which permits the issuance of the conditional use permit, a brief statement describing the use and why the applicant believes that it can be permitted under this chapter, a statement of the ownership interest in the property, and the names and addresses of the owners of all property abutting the subject property, including property located across the street or alley from the subject property.~~

(c) Procedures.

- (1) All applications for a conditional use permit shall be referred to the planning commission for its review and recommendation to the city council, and if the site is less than 5 acres, property owners within 350 feet of the property shall be notified by mail of the hearing date and time, although failure of any property owner to receive such notification shall not invalidate the proceedings. Either the planning commission or the city council shall hold a public hearing on the application. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the public hearing.
- (2) The planning commission shall make written findings, and shall forward its recommendation to the city council; if no recommendation is transmitted after referral of the application to the planning commission, the city council may take action without such recommendation.

(3) Conditional use permits shall be granted or denied by resolution of the city council.

(d) Standards for approving a conditional use permit. The planning commission shall make the following affirmative determinations before a conditional use permit may be recommended for approval by the city council:

(1) That the conditional use, with such conditions as the commission shall determine and attach, conforms to the general purpose and intent of this chapter.

(2) If the application is based on the conditional use provision in this chapter that the issuance conforms to the general characteristics of the district of which it will become a part.

(3) That the conditional use will not impede the normal and orderly development and improvement of property in the neighborhood for uses permitted in the district or districts affected.

(4) That adequate utilities, access roads, streets, drainage, and other necessary facilities have been or will be provided.

(5) That adequate measures have been or will be taken to provide ingress and egress in such a manner as to minimize traffic congestion and hazards in the public streets.

(6) In residential districts, certain uses may not be considered appropriate within the interior of residential neighborhoods because of noise, traffic, or other conditions that would tend to adversely affect the residential character of the neighborhood and possibly reduce property values. These may be considered appropriate only on the periphery of residential neighborhoods or under such conditions as the city council may deem proper. The uses may represent "buffer" uses for those areas lying between residential dwellings and nonresidential uses.

(7) In consideration of an application, the following standards shall apply:

a. *Business districts.* Certain uses are considered, as a rule, unsuitable in commercial areas because of inherent characteristics (e.g., traffic hazards, noise, light glare), proximity to residential areas, the fact that they tend not to serve nearby residential areas, or may adversely affect nearby permitted business uses.

b. *Industrial districts.* Certain uses may be considered generally unsuitable in industrial districts because of conditions that would tend to discourage other industrial development in the vicinity; these conditions may include noise, vibrations, dust, glare, unsightliness, or similar nuisances. Certain other industrial land uses are considered generally inappropriate because they represent underutilization of land, which, in turn, means a low tax return from land that under fuller development would be contributing needed revenue to the city's tax base.

c. *Temporary uses in all zoning districts.* Certain uses that are generally not suitable within a particular zoning district may be potentially suitable on a temporary basis.

This may be due to the lack of development of existing property, a short-term need, or a limited degree of adverse effects upon adjacent land use.

- (e) *Conditions.* The city may attach such reasonable conditions to the granting of a conditional use permit as it shall determine necessary or desirable to bring it within the purpose and intent of this chapter.
- (f) *Termination.* The violation of any condition in the grant of the conditional use permit may terminate the conditional use permit, following a hearing by the city council. If the property is not used or improvements substantially begun within a period of one year after the decision of the city council, the conditional use permit shall terminate, and the city planner shall notify the owner of the termination thereof. The owner, in the event of any such termination, shall have the right of appeal as set forth in this chapter.

~~*Referral to planning commission.* The city engineer shall refer the application to the planning commission. If the site is less than five acres in size property owners within 350 feet of the property in question shall be notified by mail of the hearing date and time, although failure of any property owner to receive such notification shall not invalidate the proceedings. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing.~~

~~(d) *Hearing.* The planning commission shall consider the application at a regular meeting or meeting called for that purpose. The applicant or the applicant's representative shall appear before the planning commission in order to answer questions concerning the proposed conditional use. The planning commission will consider possible adverse effects of the proposed conditional use and what additional requirements may be necessary to prevent such adverse effects.~~

~~(e) *Determination.* The planning commission shall make the following affirmative determinations before a conditional use permit may be recommended for approval by the city council:~~

- ~~(1) That the conditional use, with such conditions as the commission shall determine and attach, conforms to the general purpose and intent of this chapter.~~
- ~~(2) If the application is based on the conditional use provision in this chapter that the issuance of the same conforms to the general characteristics of the district of which it will become a part.~~
- ~~(3) That the conditional use will not substantially diminish or impair property values within the neighborhood, and, in the consideration of this question, the comparison of the use shall be with respect to uses that are permitted without a conditional use permit in the district in which it is located.~~

- ~~(4) That the conditional use will not impede the normal and orderly development and improvement of property in the neighborhood for uses permitted in the district or districts affected.~~
- ~~(5) That adequate utilities, access roads, streets, drainage, and other necessary facilities have been or will be provided.~~
- ~~(6) That adequate measures have been or will be taken to provide ingress and egress in such a manner as to minimize traffic congestion and hazards in the public streets.~~
- ~~(7) In residential districts, certain uses may not be considered appropriate within the interior of residential neighborhoods because of noise, traffic, or other conditions that would tend to adversely affect the residential character of the neighborhood and possibly reduce property values. These may be considered appropriate only on the periphery of residential neighborhoods or under such conditions as the city council may deem proper. The uses may represent "buffer" uses for those areas lying between family dwellings and nonresidential uses.~~
- ~~(8) In consideration of an application, the following standards shall apply:
 - ~~a. *Business districts.* Certain uses are considered, as a rule, unsuitable in commercial areas because of inherent characteristics (e.g., traffic hazards, noise, light glare), proximity to residential areas, the fact that they tend not to serve nearby residential areas, or may adversely affect nearby permitted business uses.~~
 - ~~b. *Industrial districts.* Certain uses may be considered generally unsuitable in industrial districts because of conditions that would tend to discourage other industrial development in the vicinity; these conditions may include noise, vibrations, dust, glare, unsightliness, or similar nuisances. Certain other industrial land uses are considered generally inappropriate because they represent underutilization of land, which, in turn, means a low tax return from land that under fuller development would be contributing needed revenue to the city's tax base. Such uses, however, may be considered as "temporary" uses.~~
 - ~~c. *Temporary uses in all zoning districts.* Certain uses that are generally not suitable within a particular zoning district are potentially suitable on a temporary basis. This may be due to the lack of development of existing property, a short-term need (such as highway construction), or a limited degree of adverse effects upon adjacent land use.~~
 - ~~d. *Recommendations of planning commission.* In general, the city council may grant a conditional use permit after considering the advice and recommendations of the planning commission and the effect of the proposed use upon the health, safety, and general welfare of occupants of surrounding land, existing and anticipated traffic conditions, including parking facilities on adjacent streets and land, and the effect on values of property in the surrounding areas, the standards and criteria contained in this subsection, and the effect of the proposed use on the comprehensive municipal~~~~

~~plan. If the city shall determine that the proposed use will not be detrimental to the health, safety, or general welfare of the community, will not cause serious traffic congestion or hazards, and will not seriously depreciate surrounding property values, and that said use is in harmony with the general purpose and intent of this chapter, the city may grant a conditional use permit.~~

~~e.— *Determination by city council.* The decision of the city council shall be by resolution, which shall include the determinations required by this chapter and may include such conditions as deemed appropriate and in the general public interest. If the city council determines not to approve the issuance of a conditional use permit, it shall incorporate in its resolution the grounds for said denial.~~

~~f.— *Architectural conditions.* The applicant for a permit shall establish that the exterior architectural appeal and functional plan of any proposed structure or improvement will not be at variance with existing exterior architectural appeal and functional plans in the vicinity. The city may set forth a further condition that the building permit application including plans and specifications to be approved by the city council before the building permit is issued so as to establish that this condition is met. If the property abuts a residential use or district, the city may impose reasonable landscaping conditions to harmonize the development with the nearby residential use or zoning district. The city shall have the authority to impose such further conditions as will bring the applications within the intent and purpose of the zoning code.~~

~~g.— *Permits not to be issued prior to city council approval.* Conditional use permits shall not be issued by the city engineer until officially approved by action of the city council, which shall consider but not be bound by the advice and recommendation of the planning commission.~~

~~h.— *Certified copy.* A certified copy of each conditional use permit shall be filed with the county recorder or registrar of titles.~~

~~(f) *Termination.* If the property for which a conditional use permit has been granted is not used for the approved conditional use, or if improvements to allow the approved use have not substantially begun within one year after the granting of the conditional use permit, the conditional use permit shall terminate, and the city engineer shall notify the owner of the termination thereof. The owner, in the event of any such conditional use termination, shall have the right of appeal as set forth in this chapter.~~

Sec. 118-41. - Interim use permits.

(a) *Definition.* As used in this section, the term “interim use” shall mean a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

(a)(b) *Application.* Any owner of property, a person, firm, association, or corporation holding a contract to purchase property, an optionee holding an option conditioned solely on the grant of an interim use permit, or the duly authorized agent of such person, may make application for

an interim use permit, which shall include the written consent of the fee owner. The application shall be made on forms supplied by the city and filed with the city planner.

~~(b) *Permit.* The city council may grant an interim use permit for the interim use of property if:~~

- ~~(1) The use conforms to the zoning regulations;~~
- ~~(2) The date or event that will terminate the use can be identified with certainty;~~
- ~~(3) Permit of the use will not impose additional costs on the city if it is necessary for the city to take the property in the future; and~~
- ~~(4) The user agrees in writing to any conditions that the city council deems appropriate for permission of the use.~~

~~(c) *Procedures.*~~

- ~~(1) All applications for an interim use shall be referred to the planning commission for its review and recommendation to the city council. Either the planning commission or the city council shall hold a public hearing on the application. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the public hearing.~~
- ~~(2) The planning commission shall forward its recommendation to the city council; if no recommendation is transmitted after referral of the application to the planning commission, the city council may take action without such recommendation.~~
- ~~(3) Interim use permits shall be granted or denied by resolution of the city council.~~

~~(d) *Standard for granting interim use permit.* The city council may grant an interim use permit for the interim use of property if:~~

- ~~(1) The use conforms to the zoning regulations;~~
- ~~(2) The date or event that will terminate the use can be identified with certainty;~~
- ~~(3) Permit of the use will not impose additional costs on the city if it is necessary for the city to take the property in the future; and~~
- ~~(4) The user agrees in writing to any conditions that the city council deems appropriate for permission of the use.~~

~~(e) *Conditions.* The city may attach such reasonable conditions to the granting of an interim use permit as it shall determine necessary or desirable to bring it within the purpose and intent of this chapter.~~

~~(f) *Termination.* The violation of any condition in the grant of the interim use permit may terminate the interim use permit, following a hearing by the city council. If the property is not~~

used or improvements substantially begun within a period of one year after the decision of the city council, the interim use permit shall terminate, and the city planner shall notify the owner of the termination thereof. The owner, in the event of any such termination, shall have the right of appeal as set forth in this chapter.

~~*Hearing.* Upon receipt of an application for an interim use permit from the city engineer, the planning commission shall hold a public hearing on the application following notice of the time, place and purpose of the hearing published in the official newspaper of the city at least ten days prior to the day of the hearing. Following the public hearing, the planning commission shall forward its recommendation to the city council. (d) *Application.* An application for an interim use permit shall be on such form as prescribed by the city engineer; filed with the city engineer; and accompanied by payment of the applicable fee.~~

~~(e) *Permit termination.* An interim use permit may be terminated by a change in zoning regulations that prohibits the interim use.~~

Sec. 118-42. - Amendments.

The zoning code (text or district map) may be amended whenever the public necessity and convenience and general welfare require such an amendment by following the procedure specified in this section. An amendment may be initiated by the city council, the planning commission, an individual property owner, or by the verified petition of the owners of not less than 50 percent of the frontage of the area affected by the proposed amendment.

(a) (1) *Application.* Any owner of property, a person, firm, association, or corporation holding a contract to purchase property, an optionee holding an option conditioned solely on the grant of a rezoning, or the duly authorized agent of such person, may make application for a rezoning text or map amendment, which shall include the written consent of the fee owner. The application shall be made on forms supplied by the city and filed with the city planner. The application shall contain the following:

(1) The overall size of the exterior of the existing or proposed building or buildings.

(2) The general character and appearance of the buildings in elevation.

(3) A site plan showing the placement of all buildings on the site, the layout of proposed parking areas showing both ingress and egress, the existing and proposed contours of the site showing any retaining walls proposed and the final slope of the finished ground as proposed. The contours of the existing land may be a maximum of five-foot intervals, and the contours of proposed grades must be on a maximum of two-foot intervals.

(4) The general layout of access roads proposed and sewer and water connections needed.

(b) *Procedures.*

(1) All applications for an rezoning text or map amendment shall be referred to the planning commission for its review and recommendation to the city council. Either the planning commission or the city council shall hold a public hearing on the application. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of

the city at least ten days prior to the day of the public hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. 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 with this section has been made.

- (2) The planning commission shall forward its recommendation to the city council; if no recommendation is transmitted after referral of the application to the planning commission, the city council may take action without such recommendation.
- (3) The city council may adopt and amend the zoning ordinance by a majority vote of all its members. The adoption or amendment or any portion of the zoning ordinance that changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the city council.
- (4) Rezoning applications shall be granted or denied by resolution of the city council.

~~*Hearing before amendment; notice.* Before any amendment is adopted, the planning commission shall hold at least one public hearing thereon. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. 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 with this section has been made. An amendment not initiated by the planning commission shall be referred to the planning commission for study and report. (2) — *Vote.* The city council may adopt and amend this chapter by a majority vote of all its members. The adoption or amendment or any portion of this chapter which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the city council.~~

- ~~(3) *Restrictions in rezoning amendments.* In the case of a proposed amendment rezoning property, the city council may impose such terms, conditions and restrictions thereto as it deems necessary to carry out the intent and purpose of this chapter.~~

~~(4) Rezoning applications. An application for rezoning of any area may be filed at the city engineer's office upon receipt of a fee in the amount established in section 118-43. The application for rezoning must be accompanied by drawings approved by the city engineer showing the following information:~~

~~a. The overall size of the exterior of the proposed building or buildings.~~

~~b. The general character and appearance of the building in elevation.~~

~~c. A site plan showing the placement of all buildings on the site, the layout of proposed parking areas showing both ingress and egress, the existing and proposed contours of the site showing any retaining walls proposed and the final slope of the finished ground as proposed. The contours of the existing land may be a maximum of five-foot intervals, and the contours of proposed grades must be on a maximum of two-foot intervals.~~

~~d. The general layout of access roads proposed and of sewer and water connections needed.~~

~~e. A list of the names and addresses of owners within 350 feet certified by an abstractor or abstract company.~~

~~The rezoning application will be presented to the planning commission after all of the above conditions are met and a date for a public hearing is set. The planning commission, after public hearing, may recommend approval or denial by the city council. After public hearing by the city council, final action may be taken.~~

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance establishes consistent standards for planning applications and provides additional language in particular for site plan reviews and Interim Use Permits.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective upon publication.

Approved: October 16, 2017

Published: October 22, 2017

Christy Wilcox, City Clerk