



**Planning & Development Division**  
*Planning & Economic Development Department*

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## MEMORANDUM

**DATE:** December 6, 2022  
**TO:** Planning Commission  
**FROM:** Jenn Reed Moses, Senior Planner  
**SUBJECT:** Proposed UDC Changes – PL 22-220

With PL 22-220, Staff is proposing several changes to the Unified Development Chapter (UDC) of the City of Duluth Code (Chapter 50). These changes were properly noticed with legal ads in the Duluth News Tribune on 11/26/22, 12/3/22, and 12/10/22.

Per the legal notice, the proposed UDC Text Amendment includes the following sections: 50-20 Use Specific Standards; 50-21 Dimensional Standards; 50-36 Reviewers and Decision Makers; 50-37 Review and Approval Procedures; 50-38 Non-Conformities; and 50-41 Definitions.

For Planning Commission discussion and recommendations, the proposed changes are organized by topic area in the attached pages, as summarized below.

Staff recommends that Planning Commission recommend approval of these changes.

**Location of front entrance on one-family homes.** Currently, the specification for a front entrance facing the front lot line is stated in the Definitions section. The proposal includes moving it to the Use-Specific Standards in Article 3, allowing front entrances to instead be located on corner side lot lines if the house is on a corner, and adding a Land Use Supervisor Administrative Adjustment to provide flexibility on the door location. These changes will allow the City to support development particularly on infill lots with narrow dimensions and steep slopes.

**Parking for vacation dwelling units.** Vacation dwelling units in Form districts were previously exempt from providing parking, since form districts themselves are not required to provide parking. A recent code update to the language regarding VDUs mistakenly removed this exemption. This proposal adds the exemption back into the code.

**Accessory home shares.** Accessory home shares (AHS), where a homeowner can rent out a shared space in their home, have grown in use. As questions have arisen, staff have identified those areas needing clarification

in the code. These clarifications reiterate the need for shared common space and clear up ambiguity and misleading language in the definition.

**Accessory solar panels.** The 6-foot setback in the UDC assumes that all solar panels will be placed on primary structures and that all primary structures conform to the setbacks currently in place. However, many buildings that legally are placed within this setback are good candidates for solar panels. Solar panels can be placed in these locations without negatively impacting neighbors, provided they are flush with the roof and follow the guidelines specified in this section.

**Accessory structures/decks.** This language is to clarify the setbacks for decks. Attached decks, like attached garages, are considered part of the primary structure (most commonly a single family house), and need to conform to the same zoning setbacks as the home. Decks, and similar structures, that are clearly detached and separate from the primary structure may follow the setbacks provided for other accessor structures. This language helps to clarify which setback to use for detached decks.

**Appeals.** This clarifying language is being recommended based on Attorneys advice.

## **50-20 USE SPECIFIC STANDARDS.**

### **A. Dwelling, one and two-family.**

In the R-1, R-2, and ~~R-P~~ MU-N districts, one- and two-family dwellings shall be designed to protect and reflect the character of ~~one-family~~ residences and neighborhoods as set forth below:

1. In the R-1, R-2, and MU-N districts, one-family dwellings shall have a principal entrance facing the front lot line or corner side lot line.
2. For two-family dwellings, ~~Exterior stairways.~~ no exterior stairways with a total vertical rise greater than five feet shall be permitted;
3. In the R-1 and R-2 districts, eEach unit in a two-family dwelling must have a separate exterior entrance on the facade facing the front ~~property~~ lot line or corner side lot line.

## **50-37.1 Common procedures and requirements**

### **L. Administrative adjustments.**

Where an application concerns development or redevelopment of a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

1. The front, side or rear setback of a new or modified structure is one foot smaller than the minimum setbacks required by this Chapter;
2. For properties zoned Residential-Traditional (R-1) or Residential-Urban (R-2), and have a lot frontage of 40 feet or less, the corner side yard setback is no less than five feet smaller than the minimum setback required by this Chapter;
3. The front, side, or rear setback for a new or modified city operated utility structure on existing utility lines is no less than five feet;
4. The height of a new or modified structure is no more than two feet taller than the maximum allowed by this Chapter;
5. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site may contain three less parking space than the minimum that is required, or may contain five more parking space than the maximum allowed in Section 50-24.4;
6. Handicap accessibility structures can encroach into the yard setbacks when such structures comply with the Minnesota State Building Code;
7. For properties where Section 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;

8. For properties where Section 50-21.2 requires that not more than 30 percent of the rear yard be occupied by any one accessory structure, exceptions may be granted for an accessory structure to occupy up to 40 percent of the rear yard; 9. The area of a new or modified sign is no more than ten percent larger than the maximum allowed by Section 50-27;

10. Where the Land Use Supervisor determines that a residentially-zoned property meets the eligibility requirements for a variance in Section 50-37.9.G.1.A, an administrative adjustment may be granted to allow parking to encroach into the front yard where parking is prohibited by Table 50-24-3 with the following conditions:

(a) The adjustment shall allow parking to encroach up to 4 feet into the front yard where parking is prohibited by Table 50-24-3;

(b) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties and the street, where screening the street view is possible;

(c) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas; such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);

(d) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

11. A one-family or two-family dwelling may locate its principal entrance(s) in a location other than the front or corner side façade if it is determined by the Land Use Supervisor that other design elements such as porches, windows, façade or roof articulation, or building materials meet the intent of orienting and visually connecting the dwelling to the public street.

#### **50-41.4 Definitions: D**

Dwelling. Any building or portion of a building that is designed for or used for residential purposes ~~and has a principal entrance facing the front lot line~~ and provides basic requirements for living, sleeping, cooking, eating, and sanitation, and is constructed on compliant and permanent footings or foundation, with permanent connections to public sanitary sewer and water. No recreational vehicle, or structure on a chassis, shall constitute a dwelling, except as allowed and provided for in manufactured home parks or recreational vehicle parks.

### **50-20.3.U**

#### **U** Vacation dwelling unit.

1. Rental Period. The minimum rental period shall not be less than two consecutive nights, nor more than a maximum of 29 consecutive nights. The minimum rental period shall not apply for vacation dwelling units in form districts,
2. Maximum Number of Persons and Bedrooms. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two, which shall not exceed nine. The maximum number of bedrooms that may be rented may not exceed four. Vacation dwelling units licensed before December 1, 2021, that exceeded four bedrooms are entitled to continue operating, however, this exemption expires upon transfer of any ownership interest in the permitted property.
3. Off Street Parking. Off street parking shall be provided at the following rate:
  - (a) Vacation dwelling units licensed on May 15, 2016, shall provide the following minimum number of off street parking spaces:
    - 1-2 bedroom unit, one space
    - 3-4 bedroom unit, two spaces
    - 5+ bedroom unit, three spaces.
  - (b) Vacation dwelling units licensed after May 15, 2016, shall provide the following minimum number of off street parking spaces:
    - 1-2 bedroom unit, one space
    - 3 bedroom unit, two spaces
    - 4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.
  - (c) Vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.
  - (d) The minimum off-street parking requirements shall not apply for vacation dwelling units in form districts.
4. Motorhome/ATV. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, off the street;
5. Other Licenses Required. In addition to the permit issued pursuant to this chapter, the property owner must obtain all licenses and permits from the city of Duluth and state of Minnesota required for guest occupancy on the property.
6. Guest Records. The property owner must provide required documents and adhere to additional requirements listed in the city of Duluth's UDC application manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures;
7. Application Materials. The property owner must provide a site plan, drawn to scale, showing parking and driveways, distance from lot line of proposed vacation dwelling to neighboring residential structures, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbecue grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen or fence that may be required to buffer these areas from adjoining properties. A dense urban screen or fence is required if the adjoining property is used as a residential use, as identified in 50-19.8. Prior to the permit being authorized, the fence or dense vegetative screen must be in place, and it must be continuously maintained during the entire permit period. The requirement for a dense urban screen or fence may be waived if the adjoining property owner does not want it on or near their shared property line, and indicates this with a signed letter;
8. Vacation Rentals Within Multi Family Structures. Any vacation dwelling unit that will be located in a multi-family structure that has nine or more dwelling units shall:
  - (a) Make available 24-hour staffing at a front desk that is accessible to all tenants;

- (b) If determined applicable by the Land Use Supervisor, provide a letter from a duly established Home Owner's Association stating the support of the Home Owner's Association Board of Directors for the vacation dwelling unit, and enumerating any Home Owner's Association rules to be incorporated into the interim use permit;
9. Termination. The interim use permit shall terminate upon change in ownership of the property or in six years after the date of issuance, whichever occurs first. Upon permit termination, property owner may reapply. The permit is only valid for the property and applicant or property owner that it was initially issued to and the permit shall not be transferred to a new applicant or property owner, or to a new property or different address.
10. Maximum Number of Vacation Dwelling Units. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling units, excepting that the maximum number of permits that may be issued shall increase by 10 percent of the net increase in housing units constructed and issued certificates of occupancy in the city in the previous year, or no more than ten (10) new vacation dwelling units per year, whichever is less, provided that the total number of vacation dwelling units authorized shall not exceed 120 units. Permits for vacation dwelling units within Form Districts (F1-F9) are exempt from the maximum number of permits that may be issued.
11. Nuisance Reduction. The vacation dwelling permit holder shall ensure that all requirements for waste removal services and prohibitions on burning of trash is strictly adhered to by occupants of the vacation dwelling. The permit holder must designate in writing a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the city within 10 days of a change in the managing agent or local contact's contact information. The permit holder shall notify by letter all property owners within 100' of the property boundaries of the name, address, and phone number of the managing agent or local contact named above and provide the city with a copy of the letter. The permit holder must notify said property owners within 10 days of a change in the managing agent or local contact's contact information.
12. Advertisement. The permit holder must include the permit number on all print, poster or web advertisements.

## **50-20-5.M**

### **M Accessory vacation dwelling unit.**

An accessory vacation dwelling unit may be created within any one-family dwelling, twinhome, duplex, or attached or detached accessory dwelling unit provided these standards are met:

- 1 Only one accessory vacation dwelling unit may be created per lot;
- 2 No variances shall be granted for an accessory vacation dwelling unit;
- 3 An accessory vacation dwelling unit shall contain no more than 800 square feet of floor area and shall be consistent in character and design with the primary dwelling;
- 4 If a separate outside entrance is necessary for an attached accessory vacation dwelling unit located within the primary building, that entrance must be located either on the rear or side of the building;
- 5 The minimum rental period shall be not less than two consecutive nights, nor more than a maximum of 29 consecutive nights. The minimum rental period shall not apply to accessory vacation dwelling units in form districts,
- 6 The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two, which shall not exceed nine. The maximum number of bedrooms that may be rented may not exceed four.
- 7 Off-street parking shall be provided at the following rate:
  - (a) Accessory vacation dwelling units licensed on or before May 15, 2016, shall provide the following minimum number of off street parking spaces:
    - 1-2 bedroom unit, one space;
    - 3-4 bedroom unit, two spaces;

5+ bedroom unit, three spaces;

(b) Accessory vacation dwelling units licensed after May 15, 2016, shall provide the following minimum number of off-street parking spaces:

1-2 bedroom unit, one space;

3 bedroom unit, two spaces;

4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.

(c) Accessory vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for accessory vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.

(d) The minimum off-street parking requirements shall not apply for vacation dwelling units in form districts.

8. Motorhome/ATV. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, off the street;
9. Other Licenses Required. In addition to the permit issued pursuant to this chapter, the property owner must obtain all licenses and permits from the city of Duluth and State of Minnesota required for guest occupancy on the property for two to 29 days;
10. Guest Records. The property owner must provide required documents and adhere to additional requirements listed in the city of Duluth's UDC application manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures;
11. Application Materials. The property owner must provide a site plan, drawn to scale, showing parking and driveways, distance from lot line of proposed vacation dwelling to neighboring residential structures, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbecue grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen or fence that may be required to buffer these areas from adjoining properties. A dense urban screen or fence is required if the adjoining property is used as a residential use, as identified in 50-19.8. Prior to the permit being authorized, the fence or dense vegetative screen must be in place, and it must be continuously maintained during the entire permit period. The requirement for a dense urban screen or fence may be waived if the adjoining property owner does not want it on or near their shared property line, and indicates this with a signed letter;
12. Any accessory vacation dwelling unit that will be located in a multi-family structure that has nine or more dwelling units shall:
  - (a) Make available 24-hour staffing at a front desk that is accessible to all tenants;
  - (b) If determined applicable by the Land Use Supervisor, provide a letter from a duly established Home Owner's Association stating the support of the Home Owner's Association Board of Directors for the accessory vacation dwelling unit, and enumerating any Home Owner's Association rules to be incorporated into the interim use permit.
13. Termination. The interim use permit shall terminate upon change in ownership of the property or in six years after the date of issuance, whichever occurs first. Upon permit termination, property owner may reapply. The permit is only valid for the property and applicant or property owner that it was initially issued to and the permit shall not be transferred to a new applicant or property owner, or to a new property or different address.
14. Maximum Number of Accessory Vacation Dwelling Units. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling units, excepting that the maximum number of permits that may be issued shall increase by 10 percent of the net increase in housing units constructed and issued certificates of occupancy in the city in the previous year, or no more than ten (10) new vacation dwelling units per year, whichever is less, provided that the total number of vacation dwelling units authorized shall not exceed 120 units. Permits for

accessory vacation dwelling units within Form Districts (F1-F9) are exempt from the maximum number of permits that may be issued.

15. Nuisance Reduction. The accessory vacation dwelling permit holder shall ensure that all requirements for waste removal services and prohibitions on burning of trash is strictly adhered to by occupants of the accessory vacation dwelling. The permit holder must designate in writing a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the city within 10 days of a change in the managing agent or local contact's contact information. The permit holder shall notify by letter all property owners within 100' of the property boundary of the name, address, and phone number of the managing agent or local contact named above and provide the city with a copy of the letter. The permit holder must notify said property owners within 10 days of a change in the managing agent or local contact's contact information.
16. Advertisement. The permit holder must include the permit number on all print, poster or web advertisements.



## **50-20.5 Accessory uses.**

### **G. Accessory home share.**

An accessory home share may be created within those districts shown where allowed by Table 50.19.8 provided these standards are met.

1. Eligible Applicant. Property owners that reside in the owner-occupied homestead property may apply for one accessory home share in their owner-occupied homesteaded property. The owner-occupied unit may be located within a one-family or two-family structure, but may not be located in a multi-family building with 3 units or more. In a two-family structure, the accessory home share shall be located in the same unit the owners inhabit.
2. Rental Period. The rental or purchase period shall be for 29 consecutive nights or less;
3. Guests and Rooms. The maximum number of overnight guests allowed is 4 persons in addition to the owner occupants. The maximum number of bedrooms that may be rented may not exceed two. Only bedrooms are allowed to be rented; all other space in the unit such as living and kitchen areas shall be shared common space with the owner occupants. Only one rental listing per night is allowed;
4. Other Licenses Required. In addition to the permit issued pursuant to this chapter, the property owner must obtain all permits from the city of Duluth and state of Minnesota required for guest occupancy on the property;
5. Other Standards. The property owner must provide required documents and adhere to additional requirements listed in the City of Duluth's UDC Application Manual related to the keeping of a guest record, property use rules, taxation, and home share permit violations procedures;
6. Termination. The permit shall terminate upon change in ownership of the property or three years from issuance date, whichever occurs first. Upon permit termination, property owner may apply to renew the permit. The permit shall be non-transferable is only valid for the property and applicant or property owner that it was initially issued to and the permit shall not be transferred to a new applicant or property owner, or to a new property or different address.
7. Residency. At least one permanent resident must be generally present on or about the premises at all times that the property is rented and occupied by the guests;
8. Advertisement. A permit holder may not advertise an accessory home share for an accessory structure that is a storage shed or garage or in any area exterior to the dwelling unit or any lot without a principle dwelling. The permit holder must include the permit number on all print, poster or web advertisements.

**50-41 DEFINITIONS.**

**50-41.1Definitions: A**

Accessory home share. A habitable bedroom or bedrooms ~~room or space~~ in an owner-occupied dwelling, single family dwelling or owner occupied twinhome or duplex two family dwelling, or attached accessory dwelling unit subordinate to an owner occupied single family, twinhome, or duplex two family dwelling, offered for trade or sale, whether for money or exchange of goods or services, for periods of 29 nights or less.

## 50-20.5 Accessory uses

### I. Accessory solar or geothermal power equipment.

2. Roof-mounted or wall-mounted solar system.

a) A solar collection system shall be located a minimum of six feet from all property lines and other structures except the structure on which it is mounted. If an existing structure is located closer than 6 feet to a property line, solar collection systems may be placed on the existing structure if the following conditions are met:

1. The collection systems are mounted on the same plane as the existing wall or roof, and
2. The collection systems are mounted with minimal spacing between the surface of the wall or roof, and
3. The collection systems are mounted in compliance with all building codes, and
4. The collection systems do not result in an encroachment into another property or public easement.

b) Notwithstanding the height limitations of the zoning district, building-mounted solar energy systems shall not extend higher than three feet above the ridge level of a roof on a structure with a gable, hip or gambrel roof and shall not extend higher than ten feet above the surface of the roof when installed on a flat or shed roof;

c) The solar collector surface and mounting devices for building-mounted solar energy systems shall be set back not less than one foot from the exterior perimeter of a roof for every one foot that the system extends above the parapet wall or roof surface, if no parapet wall exists, on which the system is mounted. Solar energy systems that extend less than three feet above the roof surface shall be exempt from this provision;

d) A solar collection system may be located on an accessory structure;

## 50-37.1.O Appeals

### O. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General provisions for appeal to planning commission.
  - (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the land use supervisor a written notice of appeal addressed to the commission and specifying the action being appealed and grounds of the appeal, and including the fee as established in the City's fee schedule;
  - (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;
  - (c) The land use supervisor shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;
  - (d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the land use supervisor notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;
  - (e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;
  - (f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;
  - (g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;
2. Exceptions.
  - (a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-27.1.N, *Electrical wiring*, or 50-27.1, *Certification of structural engineer*, must be taken to the state building official as provided in the State Building Code;
  - (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;
  - (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;
  - (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the

reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St. Louis River and the harbor;

3. Powers of planning commission on appeal.
  - (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the land use supervisor could have made regarding the application;
  - (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the land use supervisor;
  - (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;
  - (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;
4. Appeals of planning commission decisions to council.
  - (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission may appeal that decision to the council;
  - (b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the action being appealed and grounds for the additional appeal, and including the fee as established in the City's fee schedule;
  - (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the land use supervisor notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;
  - (d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;
  - (e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;
  - (f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;
5. Appeal of planning commission or city council decisions to the courts.
  - (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;
  - (b) In case of decisions of the planning commission or the city council appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected within 60 days after the decision being appealed from was made ~~is filed in the office of the planning commission~~;
  - (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;
6. Appeals of heritage preservation commission decisions to council.

Where applicable, subsection 50-37.1.O.4 shall apply of heritage commissions decisions, when appealable to city council;

## **50-21.2 Special dimensional standards.**

### **A. Lot without municipal sewer.**

Lot areas for properties not provided with municipal sewer shall be at least two acres in size or the minimum lot area for the zone district, whichever is larger, and shall be subject to county ordinances and standards regulating individual sewage treatment systems. Lots with large wetlands or shallow bedrock may be required to be larger than two acres, and shall be determined on a case-by-case basis based on the area needed to fit a sewage treatment system on the site. Lots smaller than two acres may be allowed in areas zoned R-P based on soil and site conditions;

### **B. Front yards on double frontage lots.**

On lots having double frontage and where the first and second frontages are on opposite lot lines, the required front yard shall be provided on the frontage that is the generally established frontage on the block, as determined by the building official;

### **C. Side yards.**

#### **1. Dwelling units above commercial uses.**

In all residential and mixed use districts, where dwelling units are erected above commercial establishments, no residential side yard is required, except for any side yard required for the commercial building on the side of a lot adjoining a residential district. In form districts, no side yard is required even if the lot adjoins a residential district;

#### **2. Attached and multi-family dwellings.**

For the purpose of side yard regulations, a two-family dwelling, townhouse, or multi-family dwelling shall be considered as one building occupying one lot;

#### **3. Driveways.**

Where no garage facilities are provided and the alley is not developed for access at the time the dwelling is constructed in an R-1 or R-2 district, there shall be provided one side yard of a minimum of nine feet for a driveway and the other side yard shall have a minimum width of five feet;

### **D. Rear yards Accessory Structure**

Accessory dwelling units shall not exceed the height of the principal residential structure or 20 feet, whichever is greater. All other accessory structures shall not exceed 20 feet in height.

Any accessory structure shall not occupy more than 30 percent of the rear yard area. All accessory structures on a lot shall not occupy more than 60 percent of the rear yard area.

An unattached deck that is 5 feet or closer to a primary structure must adhere to the same setbacks as primary structures in that zone district. An unattached deck that is greater than 5 feet from a primary structure must adhere to the accessory structure setbacks.

### **E. Street improvements in public right of way.**

Except as provided in Section 50-37.1.L, for development or redevelopment proposed on lots without a principle structure:

1. The street shall be improved to the most current standards on file in the office of the city engineer and shall be designed for the road classification within the zone in which the property is located;
2. The street shall be improved across the entire frontage of the lot proposed to be developed and all other contiguous property owned by the owner of the subject lot;
3. Any street improvement that results in a dead-end street that is greater than 150 feet in length shall require construction of a turn-around for emergency and maintenance vehicles approved by the city fire marshal.

For lots developed with an existing legal principle structure, the street improvement requirements need not be met when the landowner proposes an expansion of the existing legally constructed structure or a replacement principle structure, if the landowner provides evidence of a perpetual easement to access the property from an improved street of a distance not greater than 150 feet, and such access shall be improved to meet Fire Code standards.

#### F. Common Open Space.

1. All structures intended to be owned and occupied by an individual unit owner of a Common Interest Community shall be constructed within the space allocated in the governing documents for that specific unit owner, except as allowed in section 2 below;
2. A Home Owner Association or other applicable governing body of the community may grant building easements, with city approval as provided for in this sub-paragraph below, to allow encroachments of structures into the common open space as platted in the Common Interest Community Plat. In such instances, the building easement shall be considered part of the adjacent building parcel or unit. Before constructing any such encroaching structure, the owner of said adjacent building parcel or unit shall file with the Planning Department a copy of a recorded easement and survey depicting same by the private landowner are required to verify the circumstances in each instance. The Land Use Supervisor may grant city approval for the proposed building easement(s) if they do not impact more than 10% of the common open space of the community; the Planning Commission may grant city approval for impacts more than 10%. In no event can more than 30% of the common open space of the community be impacted. The Land Use Supervisor or Planning Commission may require the CIC to be re-plated to reflect the change in the reduced common open space.