

ARTICLE VIII  
**GENERAL EXCEPTIONS AND RESTRICTIONS**

**8.00.00 PRE-EXISTING NON-CONFORMING USES (MSA 5.2963(1))**

**8.00.01 Non-Conforming Uses-Buildings and Structures**

A. Prior Lawful Use

The lawful use of any land, buildings or structures existing on the date of enactment of this Ordinance may be continued at the option of the owner thereof, although such use does not conform with the provisions of this Ordinance.

B. Discontinuance of Non-Conforming Uses

If the non-conforming use of any parcel of land, building or structure is discontinued or abandoned through vacancy, lack of operation or otherwise for a continuous period of six (6) months, then any further use thereof shall conform to the provisions of this Ordinance.

C. Completion of Non-Conforming Buildings and Structures

Nothing in this Ordinance shall require any change in the construction or intended use of a building or structure, if construction has been diligently pursued within ten (10) days of the passage of this Zoning Ordinance and a land use permit application has been filed with the Zoning Administrator within thirty (30) days following the effective date of this Ordinance.

D. Structural Alterations

Structural alterations made in a non-conforming building shall not during its life exceed sixty percent (60%) of the assessed value, nor shall the building be enlarged unless the use therein is changed to a conforming use. However, a non-conforming building damaged by fire, explosion, tornado, earthquake or similar uncontrollable cause to an extent of not more than fifty percent (50%) of its value may be repaired or rebuilt within one (1) year of the date of such damage, but not thereafter.

E. Extension of Non-Conforming Uses

Extension of any non-conforming use within a building, or in adding to any building, for the purpose of extending a non-conforming use shall be permitted only upon variance approval of the Board of Appeals after a public hearing.

**8.01.00 SPECIAL LAND USES (Reference MSA 5.2963(16B))**

**8.01.01 Types of Special Land Uses**

Activities which require review and approval of the Township Planning Commission before the use is permissible, are of two (2) types:

A. Specifically defined

Those uses which are unique because of peculiar characteristics which require detailed study in order to determine their effect on the public welfare and possible injury to adjacent property, even though the use will take place in an otherwise appropriately zoned district. Examples include, but not all inclusive, are listed herein.

B. Similar and compatible

Those uses which, though not of a type designated for the specific district, are not incompatible with the prevalent activities or local environment of the district in which the activity is to be located.

C. Authority of Planning Commission

The Planning Commission shall have the authority to grant Special Land Use permits subject to such conditions of design, operation, safeguards and any other conditions and/or contingencies it deems necessary.

D. Special Land Use Application and Fee

Application for a Special Land Use permit shall be made to the Planning Commission and shall be accompanied by the fee established by the Buel Township Board.

E. Application Contents

An application for a Special Land Use permit shall at a minimum contain:

1. A statement that the applicant(s) is the owner(s) of the property involved, or is acting in the owner's behalf with the owner's written authorization.
2. A legal description of the property involved.
3. A site plan (An accurate dimensioned diagram of said property showing the existing and proposed location of all buildings, structures, water sources and waste disposal provisions.)
4. The design and uses of the existing and proposed buildings and structures.
5. A statement in support of the request for the Special Land Use permit regarding the special land use guidelines and any other relevant factors.

### 8.02.00 SPECIAL LAND USE HEARING AND NOTICE

Upon receipt of an application for a Special Land Use, in not less than five (5) days, nor more than fifteen (15) days before the hearing, notice that such a request has been received shall be:

8.02.01 **Published** in a newspaper which circulates in the Township, and

8.02.02 **Sent by mail or delivered** personally as follows:

- A. To the owners of property for which the Special Land Use is being considered, and
- B. To all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and
- C. To the occupants of all structures within 300 feet. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

8.02.03 Notice shall be **Posted** on the property at least fifteen (15) days before public hearing.

8.02.04 **The notice shall:**

- A. Describe the nature of the Special Land Use request.
- B. Identify and describe the property which is the subject of the Special Land Use request.
- C. State when and where the Special Land Use request will be considered at a public hearing.
- D. Indicate when and where written comments will be received concerning the request.

### **8.03.00 SPECIAL LAND USE GUIDELINES**

The Planning Commission shall review the particular circumstances and facts of the proposed Special Land Use in the light of the provisions of this Ordinance, health and sanitation, common welfare and safety of the community, as well as the uses prevalent in the area. Factors which must be considered in relation to the intent and purpose of this Ordinance include: conditions of operation, design, site plan, equipment employed, performance standards, size and frequency of use, traffic volume and flow, population density, parking processes, environmental impact, drainage, service to and compatibility with the community, as well as the considerations outlined by Section 10.03.00 of this ordinance.

**8.03.01 Examples of Special Land Uses** (Requiring Approval of the Planning Commission after a public hearing) In addition to other uses requiring approval of the Planning Commission, as set forth in this Ordinance, the following uses also shall require approval of the Planning Commission after a public hearing:

- A. Reservoirs, catch basins, aeration fields, ponds used for the dumping of wastes or any other materials or liquids from any commercial or industrial enterprise.
- B. Fertilizer manufacturing plants.
- C. Slaughter houses, transfer stations and rendering plants.
- D. Private airports or aircraft launching and landing pads or strips.
- E. Fish smoking or curing.
- F. Food processing plants.
- G. Migrant workers camps.
- H. Sewage disposal plants.
- I. Campgrounds.
- J. Marinas or boat liveryes.
- K. Junkyards
- L. Open storage yards whether principal or accessory use.
- M. Gravel pits, sand mines and open pit mines.
- N. Landfills.
- O. Theaters.
- P. Stadiums or arenas.
- Q. Adult book stores.
- R. Recreational facilities (e.g.. pool halls, video arcades, games of skill, etc.) utilizing 4 or more devices.
- S. Open air markets (eg flea markets, farmer's markets, etc.)
- T. Amusement and recreation parks
- U. Churches
- V. Public and community assembly buildings
- W. Schools
- X. Hospitals, clinics and sanitariums
- Y. Cemeteries
- Z. Funeral homes and mortuaries
- AA Hotels and motels
- BB. Tourist homes and rooming houses
- CC. New and used automobile sales lots
- DD. Motor vehicle repair shops
- EE. Multi-family dwellings
- FF. Boat sales, repair or storage yards

- GG. Playgrounds
- HH. Gasoline and oil service stations
- II. Combustible or toxic material storage structure or yards
- JJ. Bars and taverns
- KK. Certain roadside stands
- LL. Open air assembly of more than 300 people
- MM. Any use not specifically set forth in this ordinance.

**8.03.02 Decision of Planning Commission**

The Planning Commission may approve, approve with conditions, or deny a request for a Special Land Use. The Planning Commission shall issue a statement describing the decision, the basis for the decision and any conditions imposed on the Special Land Use.

**8.03.03 Appeal from Decision of Planning Commission**

The allowance or disallowance of a specific land use request by the Planning Commission may be appealed to the Board of Zoning Appeals by the applicant or a Buel Township land owner if such appeal is filed within sixty (60) days of the Planning Commission decision.

**8.04.00 VARIANCES (Reference MSA 5.2963(20))**

The Board of Appeals is exclusively responsible for determination of Variances as outlined by Article VII and defined by Section 7.06.00.

THE CRUCIAL POINTS OF A VARIANCE ARE UNDUE HARDSHIP AND UNIQUE CIRCUMSTANCES APPLIED TO PROPERTY. A VARIANCE IS NOT JUSTIFIED UNLESS THESE ELEMENTS ARE PRESENT IN THE CASE. A VARIANCE MAY BE AUTHORIZED ONLY BY THE BOARD OF APPEALS. THE DECISION OF THE BOARD OF APPEALS SHALL BE FINAL.

**8.04.01 Variance Application and Fee**

Application for a Variance shall be made to the Zoning Board of Appeals and shall be accompanied by the fee annually established by the Buel Township Board.

**8.04.02 Variance Application Contents**

An application for a Variance shall at a minimum contain:

- A. a **statement** that the applicant(s) is the owner(s) of the property involved, or is acting in the owner's behalf with the owner's written authorization.
- B. a **legal description** of the property involved.
- C. a **Site Plan** (An accurate diagram of said property showing the existing and proposed location of all buildings and structures thereon.)
- D. a **statement** regarding design and uses of the existing and proposed buildings and structures.
- E. a **statement** in support of the request for the Variance regarding the specifics of the "undue hardship" or "unique circumstances" which are the basis of the request.

**8.04.03 Variance Hearing and Notice**

Upon receipt of an application for a variance, in not less than five (5) days, nor more than fifteen (15) days before the hearing:

- A) Notice that such a request has been received shall be published in a newspaper which circulates in the Township, and

- B) Notice shall be sent by mail or delivered personally as follows:
1. To the owners of property for which the Variance is being considered, and
  2. To all persons to whom real property is assessed within 300 feet of the boundary of the property in question, and
  - 3) To the occupants of all structures within 300 feet. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.
- C) Notice shall be posted on the property at least fifteen (15) days before public hearing.

#### 8.04.04 Variance Application Notice Contents

The notice shall:

- A. **Identify** and describe the property which is the subject of the Variance request.
- B. **Describe** the nature of the Variance request.
- C. State the **date, time and place** that the Variance request will be considered at a public hearing.
- D. Indicate the date, time and place that **written comments** will be received concerning the request.

#### 8.04.05 Decision of Board of Appeals

The Zoning Board of Appeals may by written opinion, approve, approve with conditions or deny a request for a Variance under the provisions of Section 7.07.00.