Rice Creek Watershed District
Permit Variance Guidance
Board Approved: June 26, 2013
Effective Date: July 1, 2013

**Background:**
Rule 3 of the Rice Creek Watershed District’s Rules, effective July 1, 2013, allows the Board of Managers to grant a variance from a provision of the Rules. Whether a variance is appropriate is a decision for the judgment of the Board. An applicant bears the burden of demonstrating to the Board with specificity that the criteria to grant the requested variance are met.

**Purpose:**
The purpose for this operating procedure is to document how variance requests will be processed and managed as part of the District’s permit program.

**Rule Language:**
1. **VARIANCES AUTHORIZED.** The Board of Managers may hear a request for a variance from a literal provision of these rules where strict enforcement would cause undue hardship or practical difficulty because of circumstances unique to the property under consideration. The Board of Managers may grant a variance if an applicant demonstrates that such action will be in keeping with the spirit and intent of these rules and in doing so may impose conditions on the variance as necessary to find that it meets the standards of section 2, below. Such a request must be addressed to the Board of Managers as part of a permit application and must address each of the four criteria listed in the standard.

2. **STANDARD.** In order to grant a variance the Board of Managers must determine that:
   - (a) Special conditions apply to the structure or land under consideration that do not apply generally to other land or structures in the District.
   - (b) Because of the unique conditions of the property involved, undue hardship or practical difficulty to the applicant would result, as distinguished from mere inconvenience, if the strict letter of the rules were applied. Economic considerations alone do not constitute undue hardship or practical difficulty if any reasonable use of the property exists under the terms of the District’s rules.
   - (c) The proposed activity for which the variance is sought will not adversely affect the public health, safety, welfare, will not create extraordinary public expense; and will not adversely affect water quality, water control or drainage in the District.
   - (d) The intent of the District’s rules is met.

3. **PRACTICAL DIFFICULTY DEFINED.** In evaluating practical difficulty, the Board of Managers will consider the following factors:
   - (a) How substantial the variation is from the rule provision;
   - (b) The effect of the variance on government services;
(c) Whether the variance will substantially change the character of watershed resources or be a substantial detriment to neighboring properties;

(d) Whether the practical difficulty can be alleviated by a technically and economically feasible method other than a variance;

(e) How the practical difficulty occurred, including whether the landowner created the need for the variance; and

(f) In light of all of the above factors, whether allowing the variance will serve the interests of justice.

4. TERM. A variance expires on expiration of the CAPROC approval or permit associated with the variance request.

5. VIOLATION. A violation of any condition set forth in a variance is a violation of the District permit that it accompanies and automatically terminates the variance.

Guidance:
Consistent with the rule language above, in evaluating whether a practical difficulty exists, the Board of Managers will consider the following factors identified by the Minnesota courts:

(a) How substantial the requested divergence is from the District rule;

(b) Whether the variance would increase the cost or difficulty of providing governmental services;

(c) Whether the variance would substantially change the character of the water resource or would be a substantial detriment to neighboring properties;

(d) Whether the practical difficulty can be alleviated by a method other than a variance that is feasible and economically reasonable;

(e) Why the practical difficulty exists, including whether the landowner created the need for the variance; and

(f) Whether, in light of the above factors, granting the variance will serve the interests of justice.

Form of Variance Request:
A variance request must be submitted in writing to the Board of Managers as part of a permit application. Permit applicants requesting a variance must use the attached Variance Request form (Exhibit A).

Variance Review Fee:
The District will collect a review fee from an applicant requesting a variance from provisions in one or more District rules. The applicant is responsible for actual costs incurred by the District for staff, engineer and attorney review of the variance request, except that the first $500 of review cost is covered by the District. The applicant must post a $1500 fee deposit along with a completed Variance
Request form to initiate the variance review process. If the deposit balance drops below $500, the applicant will be notified that an additional $1500 must be deposited with the District to continue the variance review. Once the District Board has taken action on the variance request, any remaining deposited funds will be returned to the applicant with a summary report of all costs incurred by the District in reviewing the variance request.

Hourly rates for District staff and consultant time will be billed at the direct rate, not to exceed the following hourly rates:

- RCWD Staff: $50.00 per hour
- RCWD Engineer: $150.00 per hour
- RCWD Legal Counsel: $200.00 per hour

**General Procedures to Process Variance Requests:**
The following general procedures will be used by staff and consultants to bring variance requests to the Board of Managers:

- A variance request must be submitted as part of a permit application and will be processed using the same permit review schedule.
- A variance request must be in writing and be submitted on the Variance Request form along with the required variance review fee deposit. A variance request will not be considered complete if the form is not fully completed and the fee deposit is not submitted to the District.
- An applicant’s permit application will be considered incomplete until all required information pertaining to the variance request is received by the District.
- District staff and the District Engineer will review the variance request against Rule L criteria and make separate findings and recommendations, which will be documented on the Variance Request form.
- The Variance Request form along with the permit Engineers Report will be included in the Board packet preceding the meeting in which the variance request and permit application will be presented and considered.
- A request for variance and permit may be acted on at the same board meeting but the variance request will be considered as a separate Board action item before the permit application itself is considered. In appropriate circumstances, the Board of Managers will consider a variance request in advance of the meeting at which the permit application will be considered.