

**Community Planning and Economic Development Planning Division Report  
Zoning Code Text Amendment**

**Date:** June 13, 2011

**Initiator of Amendment:** Council Member Schiff

**Date of Introduction at City Council:** May 13, 2011

**Specific Site:** Citywide

**Ward:** Citywide      **Neighborhood Organization:** Citywide

**Planning Staff and Phone:** Shanna Sether, (612) 673-2307

**Intent of the Ordinance:** to revise the required findings for variances to align with a recent change to state law.

**Appropriate Section(s) of the Zoning Code:** Chapter 520, Introductory Provisions and Chapter 525, Administration and Enforcement

**Background:** On May 5, 2011, the Governor Mark Dayton signed into law a bill that amends state law regarding municipal variance authority. This bill was in response to the Minnesota Supreme Court opinion on Krummenacher v. City of Minnetonka issued on June 24, 2010. The bill amends Minn. Stat. §394.27, sub. 7 and §462.357 subd. 6 to state:

*§394.27 Subd. 7. **Variances; practical difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

*§462.357 Subd. 6. Appeals and adjustments. Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:*

*(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.*

*(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone ~~shall~~ do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.*

An ordinance amendment was introduced at the City Council on May 13, 2011, to amend Chapters of the Zoning Code relating to revise the definition and required findings for variances to align with a recent change to state law.

### **Purpose for the Amendment:**

**What is the reason for the amendment?**

**What problem is the Amendment designed to solve?**

**What public purpose will be served by the amendment?**

**What problems might the amendment create?**

The purpose of the amendment is to revise the definition and required findings for variances to align with a recent change to state law. In addition, this amendment intends to provide clear and concise findings for analysis by the public, staff and the applicable board, commission, or council.

Prior to the Krummenacher decision, most cities used a "reasonable manner" standard in applying the first prong of the analysis pursuant to the Minnesota Court of Appeals decision in Rowell v. Board of Adjustment of the City of Moorhead from 1989. In addition to meeting all of the required findings, an applicant had to show that they wanted to use their property in a reasonable manner that was prohibited

by the ordinance. The Krummenacher decision overruled Rowell and held that a zoning applicant must show that their property cannot be put to a reasonable use without the variance. This created a much higher evidentiary showing than that required under the “reasonable manner” standard and resulted in the denial of a higher percentage of variances. Variance applications submitted significantly decreased after the Krummenacher decision. Staff compared one year prior to the decision to one year afterward and saw a decrease in applications from 303 variances submitted to 124. This is a net decrease of almost 60%. The approval rate for variances during that time also decreased from 90.5% to 72%; a net decrease of over 20%. Having recognized the difficulty in approving any variance to official controls in the State of Minnesota, the Legislature introduced a bill that would codify past practice by substituting “hardship” for “practical difficulties”.

The proposed amendments to the zoning code will allow variances to be reviewed in City of Minneapolis by the standards set forth in the new state law.

Staff does not anticipate that the amendment will create significant problems. Having recognized the difficulty in approving any variance to official controls in the State of Minnesota, the Legislature adopted a bill that would essentially codify past practice by substituting “hardship” for “practical difficulties”. The proposed amendments to the zoning code will allow variances to be reviewed in City of Minneapolis by the standards set forth in the new state law.

#### **Timeliness:**

**Is the amendment timely?**

**Is the amendment consistent with practices in surrounding areas?**

**Are there consequences in denying this amendment?**

On May 5, 2011, the Governor Mark Dayton signed into law a bill that amends state law regarding municipal variance authority. This bill was in response to the Minnesota Supreme Court opinion on Krummenacher v. City of Minnetonka issued on June 24, 2010. An ordinance amendment was introduced at the City Council on May 13, 2011, to amend Chapters of the Zoning Code relating to revise the definition and required findings for variances to align with a recent change to state law.

The new state law uniformly applies to all municipalities and counties in the State of Minnesota.

If the proposed amendment is not adopted, the zoning code will not be consistent with the language recently adopted by the Minnesota State law.

#### **Comprehensive Plan:**

**How will this amendment implement the Comprehensive Plan?**

The following general land use policies of the *Minneapolis Plan for Sustainable Growth* apply:

**Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.**

- 1.1.1 Ensure that the City’s zoning code is consistent with The Minneapolis Plan and provides clear, understandable guidance that can readily be administered in targeted place-making strategies to build upon and enhance existing community assets and encourage private sector development.
- 1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

The proposed amendment is consistent with these policies of the comprehensive plan.

**Recommendation of the Community Planning and Economic Development--Planning Division:**

The Community Planning and Economic Development Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **approve** the zoning code text amendment, amending chapters 520 and 525.

**Attachments:**

1. Ordinance amending Chapter 520, Introductory Provisions
2. Ordinance amending Chapter 525, Administration and Enforcement