

1.1 A bill for an act

1.2 relating to local government; providing for variances from city, county, and town
1.3 zoning controls and ordinances; amending Minnesota Statutes 2010, sections
1.4 394.27, subdivision 7; 462.357, subdivision 6.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 394.27, subdivision 7, is amended to read:

1.7 Subd. 7. **Variances; ~~hardship~~ practical difficulties.** The board of adjustment shall
1.8 have the exclusive power to order the issuance of variances from the ~~terms~~ requirements
1.9 of any official control including restrictions placed on nonconformities. Variances shall
1.10 only be permitted when they are in harmony with the general purposes and intent of the
1.11 official control ~~in cases when there are practical difficulties or particular hardship in~~
1.12 ~~the way of carrying out the strict letter of any official control,~~ and when ~~the terms of~~
1.13 ~~the variance~~ variances are consistent with the comprehensive plan. ~~"Hardship" as used~~
1.14 ~~in connection with the granting of a variance means the property in question cannot be~~
1.15 ~~put to a reasonable use if used under the conditions allowed by the official controls; the~~
1.16 ~~plight of the landowner is due to circumstances unique to the property not created by the~~
1.17 ~~landowner; and the variance, if granted, will not alter the essential character of the locality.~~
1.18 Variances may be granted when the applicant for the variance establishes that there
1.19 are practical difficulties in complying with the official control. "Practical difficulties,"
1.20 as used in connection with the granting of a variance, means that the property owner
1.21 proposes to use the property in a reasonable manner not permitted by an official control;
1.22 the plight of the landowner is due to circumstances unique to the property not created by
1.23 the landowner; and the variance, if granted, will not alter the essential character of the
1.24 locality. Economic considerations alone shall do not constitute a hardship if a reasonable

2.1 ~~use for the property exists under the terms of the ordinance~~ practical difficulties. Practical
2.2 difficulties include, but are not limited to, inadequate access to direct sunlight for solar
2.3 energy systems. Variances shall be granted for earth sheltered construction as defined in
2.4 section 216C.06, subdivision 14, when in harmony with the official controls. No variance
2.5 may be granted that would allow any use that is ~~prohibited~~ not allowed in the zoning
2.6 district in which the subject property is located. The board of adjustment may impose
2.7 conditions in the granting of variances to. A condition must be directly related to and must
2.8 bear a rough proportionality to the impact created by the variance ~~insure compliance~~
2.9 and to protect adjacent properties and the public interest. The board of adjustment may
2.10 consider the inability to use solar energy systems a "hardship" in the granting of variances.

2.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.12 Sec. 2. Minnesota Statutes 2010, section 462.357, subdivision 6, is amended to read:

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

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

2.20 (2) To hear requests for variances from the ~~literal provisions of the ordinance~~
2.21 ~~in instances where their strict enforcement would cause undue hardship because of~~
2.22 ~~circumstances unique to the individual property under consideration, and to grant such~~
2.23 ~~variances only when it is demonstrated that such actions will be in keeping with the spirit~~
2.24 ~~and intent of the ordinance. "Undue hardship" as used in connection with the granting of a~~
2.25 ~~variance means the property in question cannot be put to a reasonable use if used under~~
2.26 ~~conditions allowed by the official controls, requirements of the zoning ordinance including~~
2.27 restrictions placed on nonconformities. Variances shall only be permitted when they are in
2.28 harmony with the general purposes and intent of the ordinance and when the variances are
2.29 consistent with the comprehensive plan. Variances may be granted when the applicant for
2.30 the variance establishes that there are practical difficulties in complying with the zoning
2.31 ordinance. "Practical difficulties," as used in connection with the granting of a variance,
2.32 means that the property owner proposes to use the property in a reasonable manner not
2.33 permitted by the zoning ordinance; the plight of the landowner is due to circumstances
2.34 unique to the property not created by the landowner; and the variance, if granted, will not
2.35 alter the essential character of the locality. Economic considerations alone ~~shall~~ do not

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3.1 constitute ~~an undue hardship if reasonable use for the property exists under the terms of~~
3.2 ~~the ordinance. Undue hardship also includes~~ practical difficulties. Practical difficulties
3.3 include, but ~~is~~ are not limited to, inadequate access to direct sunlight for solar energy
3.4 systems. Variances shall be granted for earth sheltered construction as defined in section
3.5 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and
3.6 adjustments or the governing body as the case may be, may not permit as a variance any
3.7 use that is not ~~permitted~~ allowed under the zoning ordinance for property in the zone
3.8 where the affected person's land is located. The board or governing body as the case
3.9 may be, may permit as a variance the temporary use of a one family dwelling as a two
3.10 family dwelling. The board or governing body as the case may be may impose conditions
3.11 in the granting of variances ~~to insure compliance and to protect adjacent properties.~~ A
3.12 condition must be directly related to and must bear a rough proportionality to the impact
3.13 created by the variance.

3.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.