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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **52**

January 10, 2011

Authored by Peppin, Smith, Nelson, Mahoney, Westrom and others

The bill was read for the first time and referred to the Committee on Government Operations and Elections

February 24, 2011

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

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

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

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

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

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

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

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

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

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