

A bill for an act
relating to local government; providing for the granting of variances; amending
Minnesota Statutes 2010, sections 394.27, subdivision 7; 462.357, subdivision 6.

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

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

Subd. 7. **Variances; hardship or difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the terms 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 in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan. "Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; 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 not constitute a hardship if a reasonable use for the property exists under the terms of the ordinance. Variances must be granted when the applicant of the variance establishes that there are practical difficulties or particular hardships in complying with the official control. 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 prohibited in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances ~~to insure compliance and to protect adjacent properties and~~

~~the public interest. A condition imposed must be directly related to and incidental to the~~
~~proposed variance and proportionate to the impact created by the proposed variance. The~~
board of adjustment may consider the inability to use solar energy systems a "hardship" in
the granting of variances.

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

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

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 literal provisions of the ordinance
in instances where their strict enforcement would cause undue hardship because of
circumstances unique to the individual property under consideration, and to grant such
variances only when it is demonstrated that such actions will be in keeping with the spirit
and intent of the ordinance. "Undue hardship" as used in connection with the granting
of a variance means the property in question cannot be put to a reasonable use if used
under conditions allowed by the official controls, 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 not constitute an undue hardship if reasonable use for the property exists
under the terms of the ordinance. Variances must be granted when the applicant of the
variance establishes that there is an undue hardship in complying with the official control.

Undue hardship also includes, but is 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 permitted under the 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 ~~to insure compliance and to protect adjacent properties. A~~

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- 3.1 condition imposed must be directly related to and incidental to the proposed variance and
- 3.2 proportionate to the impact created by the proposed variance.
- 3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.