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# Understanding Minnesota Variances & Variance Laws

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Local ordinances establish standards for land development which regulate things such as where buildings, yards, parking lots, driveways, signs, and lighting may be placed on properties, minimum and maximum sizes, height, potential effects on adjacent properties, and aesthetics. When there are strict requirements, property owners may seek relief by following the variance process. Minn. Stat. § 462.357 subd. 6(2). A variance is a way for a city to allow an exception to part of a zoning ordinance. A variance is different from a conditional use permit, because when a property owner is granted a variance he is allowed to use his property in a way that is otherwise forbidden by the ordinance. A conditional use permit grants the property owner the right to use his property in a way that is expressly permitted by the ordinance.

## Types of Variances

There are two types of variances, use variances and area variances. A use variance permits a use or development of the land in a manner other than that prescribed by zoning regulations. *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008). Use variances attempt to make a change in the permitted use of the property, and are most times not permitted in Minnesota. An area variance is a request for relief from a regulation controlling a dimensional or physical requirement of the land, for example, lot restrictions such as area, height, setback, density, and parking requirements. *Id.* Area variances are generally permitted as long as they keep with the spirit and intent of the ordinance and a refusal to grant them would cause the landowner “practical difficulties”.

The board of appeals and adjustments has the authority to hear requests for variances. Variances are only permitted under certain circumstances. Most important, the variance must be consistent with the comprehensive, overall zoning plan. A variance will be granted when the property owner can show that there are practical difficulties in complying with the zoning ordinance as it stands. In general, a practical difficulty in this sense means that the property owner proposes to use the property in a reasonable manner that is not permitted by the zoning ordinance, and that the difficulties of the property owner are due to circumstances unique to the property, not circumstances that were created by the landowner. Additionally, the variance cannot change the essential character of the land and area.

## Minnesota Variance Requirements

*Nolan v. City of Eden Prairie*, sums up the three requirements of the “practical difficulties test” that a landowner must meet in order to be granted a variance:

1. reasonableness,
2. unique circumstances, and
3. the essential character of the locality.

610 N.W.2d 697, 701 (Minn. Ct. App. 2000). In general, the reasonableness standard is met when the property owner wants to use the property in a reasonable way but cannot do so under the existing ordinance. For example, when looking at a variance for a property owner because desiring to place a building too close to a lot line, the first factor the board of appeals and adjustments is going to look at is whether placing a building in that spot is reasonable.

Second, the difficulties that the property owner faces cannot be created by him, but rather created by unique circumstances of the property. Unique circumstances most usually relate to the physical characteristics of the property, but do not necessarily have to be the physical conditions of the land. Some examples of unique circumstances include topography of the property, width of the lot, location of the driveway, and existing vegetation on the lot. *Krummenacher*; 783 N.W.2d at 728.

The third requirement is that the variance does not change the character of the locality. A variance is most likely going to be considered incompatible with the character of the neighborhood if it is out of place in comparison with the rest of the neighborhood and considered uncommon. *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 632-33 (Minn. Ct. App. 2002). In *Mohler* a family wanted to build onto their existing garage and make it 16 feet in height, adding on a child's playroom on the second floor. It was held that the garage was not in line with the essential character of the neighborhood because no one else in the area had a garage of that size. The larger garage also impaired the view of nearby residences, and it was unclear whether it would change any of the property values of the surrounding properties.

There are a few additional technicalities relating to when variances in Minnesota may be granted. First, a variance will not be permitted if a property owner claims that economic considerations are the cause of the practical difficulties. Variance permits provide "relief from the strict application of the zoning code, 'to prevent undue hardships or mitigate undue *non-economic* hardship' in the reasonable use of land." *TPW, Inc. v. City of New Hope*, 388 N.W.2d 390, 393 (Minn. Ct. App. 1986)(citations omitted) (emphasis added). When an owner cannot comply with an ordinance due to his financial and economic stability, it is not grounds for a variance.

Second, the board of appeals and adjustments prohibits the granting of a variance permitting any use that is not permitted under the ordinance for property in the zone where the affected person's land is located. Minn. Stat. § 462.357 subd. 6(2). This directly addresses requests for use variances. Generally in Minnesota, use variances are not allowed. This means that a variance could not allow someone to build a business or commercial entity in a residential zoning district. The one exception to this is if the the board decides to permit as a variance the temporary use of a single family dwelling as a two family dwelling. Minn. Stat. § 462.357 subd. 6(2). Typically, a two family dwelling is not allowed under the zoning ordinances to be in the same zone as single family dwellings. This decision is up to the discretion of the board.

Last, the board may decide to make conditional variances if the situation calls for such a resolution. Minn. Stat. § 462.357 subd. 6(2). In order for the condition on the variance to be appropriate, it must relate to and be roughly proportionate to the impact that the variance creates. *Id.* For example, if a variance is granted that allows for a

building to exceed an otherwise permitted height limit, conditions attached to the variance should presumably relate to mitigating the affect of excess height.

Variances are established as a way for a property owner to seek relief when the standards in place in the municipality impose strict rules. If abiding by one of these standards imposes practical difficulties on the landowner, he may choose to request a variance. The practical difficulties of the owner cannot be economic hardships alone. In order for the governing body of the municipality to make a decision on the variance, three requirements must be met. The variance must be a reasonable way to use the property that is otherwise not permitted by the ordinance, the hardship on the owner imposed by the ordinance must be from unique characteristics of the property, and the variance must be in character with the surrounding locality. If all of these conditions are met, it is likely that a local municipality may grant a property owner's variance request.

## Questions to Ask Before Filing a Variance Request

The following are some questions that a property owner should ask prior to filing a variance request:

- Would the variance impair the health, safety, comfort, and general welfare of the public?
- Would the variance be contrary to the intent and purpose of the Comprehensive Plan, Official Map, or any other ordinances of the City?
- Would the variance allow a use in a district that is not otherwise allowed?
- Would the variance be greater than necessary to accomplish the landowner's objective?
- Are there alternative locations, development concepts, or space requirements that would reduce or eliminate the request?
- Would the variance, if granted, alter the essential character of the locality/neighborhood?
- Conforming to the City Code and in the absence of a variance, could the property not be put to a reasonable use?
- Would the variance impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood?

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Once zoning ordinances are established by the local legislature, it is possible to appeal the zoning decision and to subsequently try to change the local zoning ordinance. Minnesota Statute § 462.357 subdivisions 3 through 6 addresses these processes. Local property owners that are affected by a zoning ordinance may raise an appeal. Changing a local ordinance

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Subdivision platting is the process of splitting one larger piece of land into several smaller pieces of land. Generally, this plat, or map, is drawn for the purpose of selling off the smaller pieces of land. These pieces of land are frequently built upon before being sold, often by the same home builder – which

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