

September 30, 2011

To: REGION FIVE SUSTAINABILITY PROJECT  
Land Use Work Group  
Jean Coleman

From: WILLIAM MITCHELL COMMUNITY DEVELOPMENT CLINIC  
Elizabeth Anne Lyons, Certified Student Attorney  
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Re: Legal Developments Concerning Variances in Minnesota

This memorandum defines and discusses the new legal developments concerning the granting of variances by both municipalities (cities and townships) and counties, and analyzes how three land use or zoning ordinances in Region Five treat applications for variances. The chosen jurisdictions for the purposes of this memorandum are: Cass County, Crow Wing County and the City of Nisswa. Region 5 may find this information useful, especially if it decides to propose a uniform model land use ordinance to be considered by the cities, townships and counties in its area.

## INTRODUCTION

The term variance means “any modification or variation of official controls where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause unnecessary hardship.”<sup>1</sup> If a variance is granted, a landowner is allowed to deviate from the rules or regulations of an ordinance that would normally apply.<sup>2</sup> To obtain a

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<sup>1</sup> MINN. STAT. §394.22, subd. 7 (2010).

<sup>2</sup> Handbook for Minnesota Cities, Ch. 14: Comprehensive Planning, Land Use, and City Owned Land 14:18, LEAGUE OF MINNESOTA CITIES WEBSITE (December 2010), <http://www.lmc.org/page/1/handbook-for-mn-cities-TOC.jsp>.

variance, a landowner must request one from the applicable authority.<sup>3</sup> Denials of the application may be appealed to the city council or other body designated in the ordinance.<sup>4</sup>

Revised legislation concerning variances was effective May 6, 2011.<sup>5</sup> Before that change in the law, variances were treated differently depending upon whether the city<sup>6</sup> or a county was the applicable authority.<sup>7</sup> Cities and township are governed by Minn. Stat. §462.357, subd.(6)(2); counties are governed by Minn. Stat. § 394.27, subd 7. The most important difference was the standard applied in determining whether to grant a variance.<sup>8</sup> Cities used an “undue hardship” standard.<sup>9</sup> For Counties it was a little less clear as the statute mentioned both a “practical difficulties” standard and a “particular hardship” standard.<sup>10</sup> This was unclear because the legislature did not indicate whether this was supposed to denote one standard or two and did not define either term in the statute as it had under the city/township statute for “undue hardship”.<sup>11</sup>

The Minnesota Supreme Court addressed the issue of how to interpret the standards in two cases: In re Stadsvold in 2008 which looked at the standard for counties and Krummenacher vs. City of Minnetonka which looked at the standard for cities.<sup>12</sup> A discussion of these two cases and the standards used prior to the new legislation appears in Appendix H.

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<sup>3</sup>,Typically a board of adjustment and appeals or a planning commission. . Handbook for Minnesota Cities, Ch. 14: Comprehensive Planning, Land Use, and City Owned Land 14:18

<sup>4</sup> *Id.*

<sup>5</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances).

<sup>6</sup> The statute for cities also applies to townships. For purposes of this memo, the term city includes townships.

<sup>7</sup> MINN. STAT. §462.357, subd. 6 (2010). (Dealing with cities and townships) Also attached as Appendix A. and MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties) Also attached as Appendix B.

<sup>8</sup> *Id.*

<sup>9</sup> MINN. STAT. §462.357, subd. 6 (2010). (Dealing with cities and townships).

<sup>10</sup> MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties).

<sup>11</sup> MINN. STAT. §462.357, subd. 6 (2010). (Dealing with cities and townships) and MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties).

<sup>12</sup> In re Stadsvold, 754 N.W. 2d 323 (Minn. 2008); Krummenacher v. City of Minnetonka, 783 N.W. 2d 721 (Minn. 2010).

The Krummenacher case was particularly controversial because it severely limited a city or township's power to grant a variance.<sup>13</sup> Under that decision, a city could not grant a variance unless the owner could not put the property to a reasonable use without it.<sup>14</sup> The legislature responded to this decision by streamlining the analysis and adopting one standard to be used by both cities and townships in considering variance requests.<sup>15</sup>

### **THE 2011 LEGISLATION**

The 2011 legislation amended both MINN. STAT. §394.27, subd. 7 and MINN. STAT. §462.357, subd. 6(2) and had three effects:<sup>16</sup>

First, the new law provided consistent statutory language for cities and counties.<sup>17</sup> This seemingly minor language change eliminated any confusion between the language used in the statute for cities and townships, and the language used in the statute for counties.

Second, the revised statutes eliminated the distinction between “use variances” and “area variances.” The prior statutes did not use the terms “use variances” and “area variances”; this distinction was created by the courts. This created some confusion because both the statute governing cities and the statute governing counties prohibit the grant of a variance if the proposed use is prohibited in the zoning district in which the property was located, either because it is not a permitted use in that zoning district or because it is prohibited in another portion of the

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<sup>13</sup> Nick Busse, *House Votes to Ease Restrictions on Zoning Variances*, SESSION DAILY (April 4, 2011). *See also*, Krummenacher v. City of Minnetonka, 783 N.W. 2d 721 (Minn. 2010).

<sup>14</sup> *Id.*

<sup>15</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances); *See also*, Nick Busse, *House Votes to Ease Restrictions on Zoning Variances*, SESSION DAILY (April 4, 2011).

<sup>16</sup> MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties), MINN. STAT. §462.357, subd. 6(2) (2010). (Dealing with cities and townships)

<sup>17</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances).

zoning ordinances.<sup>18</sup> One court acknowledged that only a small number of use variances are allowed under state law.<sup>19</sup>

Third, the new law standardized the language by making applying the “practical difficulties” standard for all variances.<sup>20</sup> The law defines “practical difficulties” as meaning:

...that the property owner proposed to use the property in a reasonable manner not permitted by an official control; the plight of the landowner was due to circumstances unique to the property not created by the landowner; and the variance, if granted, would not alter the essential character of the locality.<sup>21</sup>

Additionally, the applicable authority is still allowed to impose conditions on the granting of a variance but the conditions must be “directly related to and must bear a rough proportionality to the impact created by the variance”.<sup>22</sup>

### **VARIANCE PROVISIONS IN CASS COUNTY ORDINANCES**

Cass County’s current Land Use Ordinance provides a process for submitting applications for variances and for appealing the denial of variances.<sup>23</sup> Section 801.1(C) reflects the pre-legislation “practical difficulties” and “particular hardship” language differentiating use variances from area variances<sup>24</sup> and other language from the 2010 version of MINN. STAT. §394.27, subd. 7.<sup>25</sup> In Section 801.2, the ordinance provides some additional environmentally

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<sup>18</sup> For example, in *Kismet Investors, Inc. v. County of Benton*, 617 N.W. 2d 85 (Minn. Ct. App. 2000), the proposed use was not prohibited in the zoning district, but was instead prohibited by the adult-use sections of the development code.

<sup>19</sup> *Kismet Investors, Inc. v. County of Benton*, at 91.

<sup>20</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances).

<sup>21</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances). The phrase “to use the property” is an unfortunate choice of words because it suggests variances are only for proposed changes in use. The revised statute specifically states no variance may be granted for a use not allowed in the zoning district where the property is located.

<sup>22</sup> *Id.*

<sup>23</sup> CASS COUNTY, MINN., LAND USE ORDINANCE #2005-1, 801.1-801.3 (Amended by #2009-07) (Effective Jan. 10, 2010), available at [http://www.co.cass.mn.us/ordinances/200501\\_landuse.pdf](http://www.co.cass.mn.us/ordinances/200501_landuse.pdf). (Variance Section is also attached as Appendix D.)

<sup>24</sup> *Id.* at 801.1C.

<sup>25</sup> *Id.* at 801-802. See also MINN. STAT. §394.27, subd. 7 (2010) (dealing with counties).

slanted variance criteria beyond that required by MINN. STAT. §394.27, subd. 7.<sup>26</sup> One provision says a variance will not be granted if it restricts “the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties”.<sup>27</sup> Another provision states that a variance will not be granted if it would “not be in keeping with the land use and water plans and/or planning objectives of Cass County or which will increase or cause danger to life or property”.<sup>28</sup>

As of the date of this memorandum, Cass County is in the process of revising its ordinance.<sup>29</sup> As part of the revisions, Cass County is planning to include the new legislative language in order to bring their ordinance up to date with the new legal developments.<sup>30</sup> According to the most recent working copy of the proposed ordinance changes, there are some changes to clarify the variance process.<sup>31</sup>

The proposed Section 801.1(c) reflects the language in the new legislation, removing the differentiated treatment of use and area variances and inserting “practical difficulty” as the appropriate standard to apply for review of both types of variance applications.<sup>32</sup> The term “practical difficulties” is also defined in that section.<sup>33</sup>

Additionally in the Variance Criteria section, the ordinance says that a variance may not, “allow any use that is prohibited in the zoning district in which the subject property is

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<sup>26</sup> CASS COUNTY, MINN., LAND USE ORDINANCE #2005-1, 801.2 (Amended by #2009-07) (Effective Jan. 10, 2010), available at [http://www.co.cass.mn.us/ordinances/200501\\_landuse.pdf](http://www.co.cass.mn.us/ordinances/200501_landuse.pdf).

<sup>27</sup> *Id.* at 801.2(B).

<sup>28</sup> *Id.* at 801.2(D).

<sup>29</sup> Telephone interview with John Ringle, Director, Cass County Environmental Services Department (Aug. 11, 2011). A copy of the interview notes is available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center.

<sup>30</sup> Telephone interview with John Ringle, Director, Cass County Environmental Services Department (Aug. 11, 2011).

<sup>31</sup> CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1, 801-802. (Working Copy #2011-01, Aug. 10, 2011), A copy of this draft ordinance is also available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center.

<sup>32</sup> *Id.* at 801.1(C).

<sup>33</sup> *Id.*

located...”.<sup>34</sup> This seems to indicate that use variances would not be allowed under the ordinance.

However, the proposed Section 801.2(H) includes definitions of “use variance” and “area variance”, clarifying the difference between the two.<sup>35</sup> Additionally, the proposed section includes language from the Stadsvold case concerning after-the-fact applications for area variances and the factors to be used to determine whether there have been “practical difficulties” in such cases.<sup>36</sup> This is not consistent with the revised statute which eliminates the distinction between use and area variances, and is confusing to the reader as to whether use variances are allowed or prohibited. Hopefully before the County revises the ordinance it will take a closer look at this language and make the necessary clarifications. The timeline is for the ordinance to be in effect by the end of 2011.<sup>37</sup>

#### **VARIANCE PROVISIONS IN CROW WING COUNTY ORDINANCES**

Crow Wing County’s Land Use Ordinance was recently revised and was effective on April 22, 2011, after the Stadsvold decision but before the statutory changes were passed.<sup>38</sup>

The Crow Wing County ordinance also provides a process for applying for, granting and appealing the denial of variances.<sup>39</sup> The ordinance reflects the language from the Stadsvold case in Article 9.4.<sup>40</sup> Article 9.4(A) sets out the criteria for reviewing an application for an area

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<sup>34</sup> CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1, 801.2(A).

<sup>35</sup> CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1, 801.2(H).

<sup>36</sup> CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1, 801-802. *See also*. In re Stadsvold, 754 N.W. 2d 323, 333 (Minn. 2008).

<sup>37</sup> Telephone interview with John Ringle, Director, Cass County Environmental Services Department (Aug. 11, 2011).

<sup>38</sup> Crow Wing County, Minn., Land Use Ordinance (Apr. 22, 2011), available at [http://www.co.crow-wing.mn.us/planning\\_zoning/ordinances/docs/Crow\\_Wing\\_County\\_Ordinance\\_Final\\_Version\\_3\\_22\\_111.pdf](http://www.co.crow-wing.mn.us/planning_zoning/ordinances/docs/Crow_Wing_County_Ordinance_Final_Version_3_22_111.pdf). (Variance section is also attached as Appendix F).

<sup>39</sup> *Id.* at 9.1-9.8.

<sup>40</sup> Crow Wing County, Minn., Land Use Ordinance 9.4 (Apr. 22, 2011), available at [http://www.co.crow-wing.mn.us/planning\\_zoning/ordinances/docs/Crow\\_Wing\\_County\\_Ordinance\\_Final\\_Version\\_3\\_22\\_111.pdf](http://www.co.crow-wing.mn.us/planning_zoning/ordinances/docs/Crow_Wing_County_Ordinance_Final_Version_3_22_111.pdf).

variance and applies the “practical difficulties” standard for granting that request.<sup>41</sup> The term “practical difficulties is defined in the ”Definitions” section.<sup>42</sup> Article 9.4(B) sets out the criteria for reviewing an application for a use variance and applies a “hardship” standard for granting the request. The definition of “hardship” is identical to the definition of “particular hardship in the Stadsvold decision.<sup>43</sup> Article 9.4 (C) incorporates the language from Stadsvold concerning criteria for determining whether there have been “practical difficulties” in the case of after-the-fact area variances.<sup>44</sup>

To comply with the new statutory changes, Crow Wing County needs to amend Article 9 to reflect the language of the May 6, 2011 legislation. It will also need to remove any language conflicting with the new legislation, especially the language differentiating “use variances” and “area variances” from the Stadsvold case.

#### **VARIANCE PROVISIONS IN CITY OF NISSWA ORDINANCE**

In the City of Nisswa, variances are addressed in the “Administration” chapter of the Land Use and Subdivision Ordinance.<sup>45</sup> Section 13.7(A)-(B) sets out the process for applying for, granting, and appealing denial of a variance.<sup>46</sup> Section 13.7(C) sets out questions to aid in determining whether the landowner’s request for a variance should be granted, using the old statutory language<sup>47</sup> The term “hardship” in the opening paragraph of the ordinance denotes the

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<sup>41</sup> Crow Wing County, Minn., Land Use Ordinance 9.4(A).

<sup>42</sup> *Id.* at 46.

<sup>43</sup> *Id.* at 9.4 (B). *See also. In re Stadsvold*, 754 N.W. 2d 323, 329 (Minn. 2008).

<sup>44</sup> Crow Wing County, Minn., Land Use Ordinance 9.4(C) (Apr. 22, 2011), *available at* [http://www.co.crow-wing.mn.us/planning\\_zoning/ordinances/docs/Crow\\_Wing\\_County\\_Ordinance\\_Final\\_Version\\_3\\_22\\_111.pdf](http://www.co.crow-wing.mn.us/planning_zoning/ordinances/docs/Crow_Wing_County_Ordinance_Final_Version_3_22_111.pdf). *See also. In re Stadsvold*, 754 N.W. 2d 323, 333 (Minn. 2008).

<sup>45</sup> City of Nisswa, Minn., Land Use and Subdivision Ordinance 13.7 (Dec. 17, 2008), *available at* [http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW\\_ord\\_010109.pdf](http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW_ord_010109.pdf).

<sup>46</sup> *Id.* at 13.7(A)-(B).

<sup>47</sup> MINN. STAT. §462.357, subd. 6 (2010)

standard to be used to review variance requests.<sup>48</sup> “Hardship” actually means “undue hardship” as evidenced by the inclusion of the “undue hardship” test in the ordinance.<sup>49</sup> The May 6, 2011 legislation, however, changed the standard to “practical difficulties” standard.<sup>50</sup> Additionally Section 13.7 (D) sets out general provisions for variances.<sup>51</sup> Some of the provisions include language contained in the statute or language to provide further criteria pertaining to the variance process.<sup>52</sup>

To come into compliance with the revised statute, the City of Nisswa would need to amend Section 13 to reflect the “practical difficulties” standard as well as other language from the May 6, 2011 legislation to ensure the Ordinance complies with the new legislation.

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<sup>48</sup> City of Nisswa, Minn., Land Use and Subdivision Ordinance 13.7 (Dec. 17, 2008), available at [http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW\\_ord\\_010109.pdf](http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW_ord_010109.pdf).

<sup>49</sup> *Id.* at 13.7(C).

<sup>50</sup> Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances).

<sup>51</sup> *Id.* at 13.7(D).

<sup>52</sup> *Id.*



## REFERENCES

### MINNESOTA STATUTES, LAWS AND INTERPRETATIONS

Act of May 6, 2011, ch. 19, 2011 Minn. Laws H.F. No. 52 (providing for variances from city, county, and town zoning controls and ordinances).

MINN. STAT. §394.27, subd. 7 (2010).

MINN. STAT. §394.27, subd. 7 (2008).

MINN. STAT. §394.27, subd. 7 (2010).

MINN. STAT. §462.357, subd. 1e(a)-(b) (2008).

MINN. STAT. §462.357, subd. 6 (2008).

MINN. STAT. §462.357, subd. 6 (2010).

MINN. STAT. §462.357, subd. 6(2) (2010).

MINN. STAT. § 645.16 (2010).

MINN. STAT. § 645.17(2) (2006).

### LOCAL ORDINANCES AND CODES

CASS COUNTY, MINN., LAND USE ORDINANCE #2005-1 (Amended by #2009-07) (Effective Jan. 10, 2010), *available at* [http://www.co.cass.mn.us/ordinances/200501\\_landuse.pdf](http://www.co.cass.mn.us/ordinances/200501_landuse.pdf).

CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1 (Working Copy #2011-01, Aug. 10, 2011), A copy of this draft ordinance is also available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center.

City of Nisswa, Minn., Land Use and Subdivision Ordinance (Dec. 17, 2008), *available at* [http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW\\_ord\\_010109.pdf](http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW_ord_010109.pdf).

Crow Wing County, Minn., Land Use Ordinance (Apr. 22, 2011), *available at* [http://www.co.crow-wing.mn.us/planning\\_zoning/ordinances/docs/Crow\\_Wing\\_County\\_Ordinance\\_Final\\_Version\\_3\\_22\\_111.pdf](http://www.co.crow-wing.mn.us/planning_zoning/ordinances/docs/Crow_Wing_County_Ordinance_Final_Version_3_22_111.pdf).

### CASES

County of Freeborn v. Claussen, 203 N.W. 2d 323, 325 (1972).

In re Appeal of Kenney, 374 N.W.2d 271, 274 (Minn. 1985).

In re Stadvold, 754 N.W. 2d 323 (Minn. 2008).

Krummenacher v. City of Minnetonka, 783 N.W. 2d (Minn. 2010).

Rowell v. Board of Adjustment of Moorhead, 446 N.W.2d 917 (Minn. App. 1989).

Sletten v. Ramsey County, 675 N.W.2d 291, 302 (Minn. 2004).

#### **ARTICLES, PAPERS AND REPORTS**

Handbook for Minnesota Cities, Ch. 14: Comprehensive Planning, Land Use, and City Owned Land 14:18, LEAGUE OF MINNESOTA CITIES WEBSITE (December 2010),  
<http://www.lmc.org/page/1/handbook-for-mn-cities-TOC.jsp>.

Nick Busse, *House Votes to Ease Restrictions on Zoning Variances*, SESSION DAILY (April 4, 2011). Available at <http://www.house.leg.state.mn.us/hinfo/sessiondaily.asp?storyid=2596>.

#### **INTERVIEWS AND OTHER CORRESPONDENCE**

Telephone interview with John Ringle, Director, Cass County Environmental Services Department (Aug. 11, 2011). A copy of the interview notes is available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center.

## **APPENDIX A**

### Minn. Stat. §462.357 Subd. 6 (Appeals and adjustments)-CITIES/TOWNSHIPS

Legislation Valid Before May 6, 2011-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. 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.

## **APPENDIX B**

### **Minn. Stat. §394.27 Subd. 7 (Creation and Duties of Board of Adjustment)-COUNTIES**

#### **Subd. 7. Variances, Hardship.**

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 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. The board of adjustment may consider the inability to use solar energy systems a "hardship" in the granting of variances.

**CHAPTER 19—H.F.No. 52**

*An act relating to local government; providing for variances from city, county, and town zoning controls and ordinances; 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~~ practical difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the ~~terms 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 ~~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~~ variances 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. 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 shall do not constitute a hardship if a reasonable use for the property exists under the terms of the ordinance~~ 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 ~~prohibited~~ 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 ~~to~~. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance ~~insure compliance and to protect adjacent properties and the public interest. 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, 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 an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes practical difficulties. Practical difficulties include, but is 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 permitted 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 to insure compliance and to protect adjacent properties. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.~~

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

Presented to the governor May 2, 2011

Signed by the governor May 5, 2011, 3:03 p.m.

**APPENDIX D.**

**Current Cass County Land Use Ordinance Variance Section**

**800 VARIANCES AND APPEALS**

**801 VARIANCES**

**801.1 Applications and Notices**

A. A landowner or a person with interest in a property may make an application to the PAC/BOA for a variance 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 where the hardship is not solely economic. A permit application for the intended use must accompany the variance application. If the variance is denied, the permit fee will be refunded.

B. No variance application will be accepted from landowners or for property on which there are existing violation(s) of any Cass County ordinance unless the Department determines that the variance is a part of resolving the violation(s).

C. The PAC/BOA 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 County comprehensive plan. Variances may be granted for earth sheltered construction as defined in Minnesota Statutes, Chapter 216C.06, subdivision 14, when in harmony with the official controls. No variance shall be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. The PAC/BOA may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest. The PAC/BOA may consider the inability to use solar energy systems a "hardship" in the granting of variances.

D. Written notice of time, place and purpose of the public hearing shall be published in the official newspaper designated by the Board and sent to the landowner, the applicant, and owners of record within one-quarter (1/4) mile of the affected property at least ten (10) days prior to the date upon which the application will be considered. This distance shall be extended to insure that a minimum of ten (10) property owners are so notified. In addition, notice shall be sent to adjoining counties, incorporated municipalities, or townships within proposed area. The applicant or their agent shall be present at the public hearing at which their application is considered, or action on the application will be tabled unless waived by the PAC/BOA.

**801.2 Variance Criteria**

A variance may not circumvent the general purposes and intent of this ordinance. In no case shall a variance be granted which the board determines will:

- A. Allow any use that is prohibited in the zoning district in which the subject property is located, or;
- B. Restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties, or;
- C. Result in incompatible land uses that would be detrimental to the protection of ground and surface water quality, or;
- D. Not be in keeping with the land use and water plans and/or planning objectives of Cass County or which will increase or cause danger to life or property, or;
- E. Be inconsistent with the preservation of natural land forms, vegetation or wetlands of Cass County, or;
- F. Result from the circumstances created by the landowner, or;
- G. Not change from a previously denied application.

**801.3 Findings and Fact**

In ruling on a variance request, the PAC/BOA shall make written findings of fact upon the following considerations and Minnesota Statutes, Chapter 394.27, Subd. 7:

- A. The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls.
- B. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- C. The variance, if granted, will not alter the essential character of the locality.
- D. The need for the variance is not justified by economic considerations alone.
- E. There is a complying individual sewage treatment system present for the intended use of the property.

**801.4 Conditions**

Conditions, as deemed appropriate by the PAC/BOA, may be attached to enforce the general purpose and intent of this ordinance including but not limited to financial assurance as indicated in section 503 of this ordinance, shoreline buffers as prescribed in section 1123 of this ordinance, or subsurface sewage treatment system upgrade.

**801.5 Lapse of Variance**

The use approved under a variance must commence within two (2) years of the date the variance or appeal (issuance of variance through appeal process) was approved. After two (2) years, a new variance application must be submitted.

**802 APPEALS**

**802.1 Appeals of Variances**

The procedure for the appeal of a variance shall be as set forth under Minn. Statutes, Chapter 394.27.

**802.2 Appeals of Administrative Decisions**



An appeal from any permit, order, requirement, decision, or determination made by the Department shall be filed with the PAC/BOA within thirty (30) days from the date the decision was rendered. The appeal shall be filed in writing specifying the grounds thereof, together with an appeal bond in the amount of five hundred (\$500) dollars. The PAC/BOA shall hear the appeal within thirty (30) days of the date the appeal is filed and give due notice thereof to the appellant and the officer from whom the appeal is taken and to the public and decide the same within thirty (30) days of the appeal hearing. An appeal stays all proceedings in furtherance of the action appealed from unless the PAC/BOA certifies that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. The PAC/BOA may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit. The reasons for the Board's decision shall be stated in writing. If the decision of the Department is overturned, the full amount of the appeal bond shall be refunded to the appellant. If the decision of the Department is upheld or modified, the Department is entitled to recover expenses directly associated to the appeal and shall refund any balance of the appeal bond to the appellant.

CASS COUNTY, MINN., LAND USE ORDINANCE #2005-1 (Amended by #2009-07) (Effective Jan. 10, 2010), available at [http://www.co.cass.mn.us/ordinances/200501\\_landuse.pdf](http://www.co.cass.mn.us/ordinances/200501_landuse.pdf).

**APPENDIX E.**

**Draft of Future Cass County Land Use Ordinance Variance Section**

**800 VARIANCES AND APPEALS**

**801 VARIANCES**

**801.1 Applications and Notices**

A. A landowner or a person with interest in a property may make an application to the PAC/BOA for a variance. ~~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 where the hardship is not solely economic.~~ A permit application for the intended use must accompany the variance application. **If the variance is denied, the permit application fee will be refunded. ~~application permit fee will be refunded.~~ If a variance is withdrawn prior to a PAC/BOA decision, the variance fee will be refunded, less \$50.00 for processing.**

B. No variance application will be accepted from landowners or for property on which there are existing violation(s) of any Cass County ordinance unless the Department determines that the variance is a part of resolving the violation(s).

~~C. The PAC/BOA 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 County comprehensive plan. Variances may be granted for earth sheltered construction as defined in Minnesota Statutes, Chapter 216C.06, subdivision 14, when in harmony with the official controls. No variance shall be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. The PAC/BOA may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest. The PAC/BOA may consider the inability to use solar energy systems a "hardship" in the granting of variances.~~

**C. The Planning Commission/Board of adjustment shall have exclusive power to order the issuance of variances from the requirements of the Land Use Ordinance, the Subdivision & Platting Ordinance and the Subsurface Sewage Treatment Ordinance including restrictions placed upon nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the applicable 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 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 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 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 M.S. 216C.06, subdivision 14, when in harmony with ordinances. No variance may be granted that would allow any use not allowed in the zoning district in which the subject property is located. The Planning Commission/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.

D. Written notice of time, place and purpose of the public hearing shall be published in the official newspaper designated by the Board and sent to the landowner, the applicant, and owners of record within one-quarter (1/4) mile of the affected property at least ten (10) days prior to the date upon which the application will be considered. This distance shall be extended to insure that a minimum of ten (10) property owners are so notified. In addition, notice shall be sent to adjoining counties, incorporated municipalities, or townships within proposed area. The applicant or their agent shall be present at the public hearing at which their application is considered, or action on the application will be tabled unless waived by the PAC/BOA.

### **801.2 Variance Criteria**

A variance may not circumvent the general purposes and intent of this ordinance. In no case shall a variance be granted which the board determines will:

- A. Allow any use that is prohibited in the zoning district in which the subject property is located, or;
- B. Restrict the passage of storm water in such a manner as to increase the height of flooding or impact adjacent properties, or;
- C. Result in incompatible land uses that would be detrimental to the protection of ground and surface water quality, or;
- D. Not be in keeping with the land use and water plans and/or planning objectives of Cass County or which will increase or cause danger to life or property, or;

E. Be inconsistent with the preservation of natural land forms, vegetation or wetlands of Cass County, or;

F. Result from the circumstances created by the landowner, or;

G. Not change from a previously denied application.

H. Variance's are now classified as a *Use variance* or *Area variance*.

“A USE variance permits a use or development of land other than that prescribed by zoning regulations.” Expansion of a non-conforming *structure* must be reviewed by the “undue hardship/reasonable use” test. To establish undue hardship the applicant must show that the property in question cannot put to a reasonable use.

“An AREA variance controls lot restrictions such as area, height, set back density and parking requirements.” Area variance must be reviewed by the “practical difficulties” standards which are less restrictive than “undue hardship/reasonable use”. The “practical difficulties” criteria are: 1. how substantial the variation is in the relation to the requirement; 2. the effect the variance would have on governmental services; 3. whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties; 4. when the practical difficulty occurred, including whether the owner created the need for the variance; and 5. whether in light of all the above factors , allowing the variance will serve the interests of justice.

“After the fact” *area* variances may be granted provided that it is determined that there are “practical difficulties” based upon the following factors. 1. The applicant acted in good faith. 2. The applicant attempted to comply with the law by obtaining a building permit. 3. The applicant obtained a permit from another entity that violated the law. 4. The applicant made a substantial investment in the property. 5. The applicant completed the repairs/construction before the applicant was informed of the impropriety. 6. The nature of the property is residential/recreational and not commercial. 7. There are other similar structures on the lake. 8. The minimum benefits to the county appear to be far outweighed by the detriment the applicant would suffer if forced to remove the structure.

CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1 (Working Copy #2011-01, Aug. 10, 2011), A copy of this draft ordinance is also available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center.

**APPENDIX F.**

**Crow Wing County Land Use Ordinance Variance Section**

**ARTICLE 9--VARIANCES/APPEALS**

**9.1 APPLICATIONS**

Application for Variances shall be filed with the Administrator who shall forward to the Planning Commission/Board of Adjustment:

A. A copy of the application and additional information determined by the Administrator to be pertinent to the application; and,

B. A Certificate of Survey shall be required showing:

1. The buildable area
2. All lot dimensions and road right-of-ways
3. All structures and setbacks, building height, total square footage on the parcel
4. Size and location of wetlands, contours, percent of impervious surface, bluff or steep slopes, septic system and well
5. Lake or river classification, , and ordinary high water elevation.

C. The Administrator shall have the discretion to determine whether an application may be forwarded to the Board of Adjustment without an accompanying Certificate of Survey. A determination by the Administrator that a Certificate of Survey is not necessary shall be made in writing on a form approved by the County Board for this purpose. The form shall specifically set forth the facts upon which the determination was made, and a copy of said form, signed by the Administrator, shall be forwarded to the County Administrator and to the Board of Adjustment.

**9.2 PUBLIC HEARING**

Acting in its capacity as the Board of Adjustment, the Planning Commission/Board of Adjustment shall hold at least one public hearing on an application for a variance pursuant to Minnesota Statutes, Chapter 394.26 and its adopted rules of business. The Planning Commission/Board of Adjustment may hold additional public hearings when it determines that such hearings will be in the public interest.

**9.3 DELAYED ACTION**

In considering the application for a Variance, the Planning Commission/Board of Adjustment may adjourn the hearing to a future time and defer action or consideration until further information desired from the applicant is submitted. The applicant shall be notified in writing of the information needed or reason for tabling the item. The provisions for action on an application shall be in compliance with Minnesota Statutes, Chapter 15.99 and Article 3.8 A. of this Ordinance.

**9.4 VARIANCE CRITERIA**

**A. Criteria for Area Variance:** Area variances may be granted if the Planning Commission/Board of Adjustment determines there are practical difficulties based on the following criteria:

1. How substantial the variation is in relation to the requirement.
2. The effect the variance would have on government services.
3. Whether the variance would effect a substantial change in the character of the neighborhood or would be a substantial detriment to neighboring properties.
4. Whether the practical difficulty can be alleviated by a feasible method other than a variance—economic considerations can be considered.
5. How the practical difficulty occurred, including whether the landowner created the need for the variance.
6. Whether in light of all the other factors, allowing the variance would serve the interests of justice.

**B. Criteria for Use Variance:** A use variance may be granted if the Planning Commission/Board of Adjustment determines there is a hardship based on the following criteria:

1. Whether the need for a variance is due to circumstances unique to the property and not created by the landowner;
2. Whether the variance would alter the essential character of the locality;
3. Whether a reasonable use exists for the property under the terms of this ordinance;
4. Whether the hardship is based solely on economic considerations;
5. Whether the variance would grant a new use that is prohibited in the land use district in which the property is located.

**C. Criteria for After-The-Fact Variance.** After-the-fact variances may be granted if the Planning Commission/Board of Adjustment determines there are practical difficulties based on the following criteria:

1. Is the variance requested a substantial variation from the requirements of the Land Use Ordinance?
2. Will the variance request have an adverse effect on government services?
3. Will the variance request cause a substantial change in the character of the neighborhood, or will it result in a substantial detriment to neighboring properties?
4. Is there another feasible method to alleviate the need for a variance?
5. Did the landowner create the need for the variance?
6. Did the applicant fail to obtain a variance/or comply with the applicable requirements before commencing work?
7. Did the applicant attempt to comply with the ordinance by obtaining the proper permits?
8. Did the applicant obtain a permit from another governing body or agency that violated the County Ordinance?
9. Did the applicant make a substantial investment in or improvement to the property?

10. Did the applicant complete the repairs/construction before the applicant was informed of the violation?
11. Are there other similar structures in the neighborhood?
12. Would the minimum benefits to the County appear to be far outweighed by the detriment the applicant would suffer if forced to move or remove the structure?

## **9.5 CONDITIONS MAY APPLY**

**A.** If the variance criteria in Article 9.4 have been met, the Planning Commission/Board of Adjustment, in approving any such application, may require additional conditions, as may be reasonable under all circumstances concerned therewith, to be imposed as a condition for granting of the permit that shall fulfill the purposes of this Ordinance. Such conditions may include, but are not limited to, the following:

1. Mitigation actions to off-set environmental consequences of variance approval according to Article 27 and 41;
2. Increased setbacks from the ordinary high water level;
3. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted according to Article 27;
4. Special provisions for the location, design, size and use of allowed structures, sewage treatment systems, and vehicle parking areas.
5. Performance security as prescribed in Article 3.6 of this ordinance

**B.** The Department may conduct follow up inspections as necessary to insure that the conditions established by the Board of Adjustment are met.

**C.** Failure to comply with variance conditions as imposed by the Planning Commission/Board of Adjustment is a violation of this ordinance punishable under Article 3.5.

## **9.6 VARIANCE DECISION**

After reviewing the application, considering all pertinent facts, and hearing testimony at the public hearing, the Planning Commission/Board of Adjustment may approve, deny, or modify the variance request. The Planning Commission/Board of Adjustment shall prepare written findings of fact to support its decision. A copy of the decision and findings of fact shall be forwarded to the applicant. If the variance is approved, the Administrator shall cause a copy of the variance to be recorded with the land records for the subject property in the Office of the County Recorder. A copy of the final decision granting a variance within a shoreland area shall be sent to the Commissioner of the Department of Natural Resources within 10 days of final action.

## **9.7 APPEALS OF ADMINISTRATIVE ACTIONS TO THE PLANNING COMMISSION/BOARD OF ADJUSTMENT**

**A.** Acting in its capacity as the Board of Adjustment, the Planning Commission/Board of Adjustment shall hear all appeals of final administrative orders, requirements, decisions, or determinations. Appeals to the Planning Commission/Board of Adjustment shall be filed with the Auditor within 30 days of the date the order, action, or determination was made. The appeal shall be filed in writing specifying the grounds thereof, together with a fee according to the most recent County Board-approved fee schedule. The Auditor shall notify the Administrator of the appeal within 5 working days. The Administrator shall, within 30 days of such notice from the Auditor, call a properly noticed public hearing to hear such appeal. The appellant may appear in person at the hearing and/or be represented by an agent.

**B. Determination of appeal.** The Planning Commission/Board of Adjustment shall review the information submitted by the appellant, a report from the Department, and the provisions of this Ordinance, and affirm the original decision unless the Planning Commission/Board of Adjustment determines that:

1. The decision was arbitrary and capricious, or;
2. The decision did not comply with the standards in this Ordinance.

**C.** The Planning Commission/Board of Adjustment shall decide the matter appealed within 30 days after the date of the hearing.

**D.** The Planning Commission/Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed, and to that end shall have all the powers of the officer whose decision was appealed, and may direct the issuance of a permit. The reasons for the Planning Commission/Board of Adjustment decision shall be stated in writing and provided to the appellant and the Auditor's Office.

## **9.8 APPEALS OF PLANNING COMMISSION/BOARD OF ADJUSTMENT DECISIONS**

Pursuant to Minnesota Statutes, Chapter 394.27, Subd. 9, all decisions by the Planning Commission/Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final, except that any aggrieved person or persons, or any department, board, or commission of the jurisdiction or of the State shall have the right to appeal within 30 days after receipt of notice of the decision, to District Court on questions of law and fact.

Crow Wing County, Minn., Land Use Ordinance (Apr. 22, 2011), *available at* [http://www.co.crow-wing.mn.us/planning\\_zoning/ordinances/docs/Crow\\_Wing\\_County\\_Ordinance\\_Final\\_Version\\_3\\_22\\_111.pdf](http://www.co.crow-wing.mn.us/planning_zoning/ordinances/docs/Crow_Wing_County_Ordinance_Final_Version_3_22_111.pdf).



## APPENDIX G.

### City of Niswaga Land Use and Subdivision Ordinance Variance Section

#### 13.7 VARIANCES

Where the literal interpretation of the terms of this ordinance cause a hardship to a property owner, the Board of Adjustment may grant a variance from a standard or dimensional requirement as set forth in the procedures outlined below.

A. A Complete Application. Variances shall be issued for structures and/or uses as approved by the Board of Adjustment after a public hearing. All applications for a variance shall be submitted to the Zoning Administrator not less than 30 days ahead of the hearing date, accompanied by a professionally prepared survey, unless waived by the Zoning Administrator, along with the appropriate fee. The application shall be judged as a complete application if it contains the information required in Section 13.6 (B). The fee or contract owner or his/her authorized agent shall sign the application.

B. The Administrator shall notify all property owners within 350' by regular mail and shall advertise the hearing once in the legal section of the official newspaper at least 10 days ahead of the public hearing. He shall send the same notice to the DNR postmarked at least 10 days prior to the date of the hearing, if the proposed use is in shorelands. At his/her option, the proposer may request a sketch plan review with no action taken by the Board of Adjustment and with no fee by giving 5 days notice thereof to the Zoning Administrator if meeting time permits. The Zoning Administrator shall provide the findings and determination to the DNR postmarked within 10 days, if in shoreland.

C. Variance Criteria. Variances shall be granted if the Board of Adjustment finds that the application meets the following criteria:

1. Does the strict enforcement of the provisions of this ordinance create an undue hardship to the property owner?
2. Is the granting of the variance in keeping with the spirit and intent of the Ordinance?
3. Is the plight of the property owner due to circumstances unique to the property and not caused by the property owner?
4. Do the terms and conditions of the variance protect the essential character of the neighborhood?
5. Is the variance based on findings of fact other than economic considerations?
6. Is the variance for a land use that is allowed under the terms of the Ordinance?

D. General Provisions

1. Variances shall not allow or create a use not provided for in a zoning district.
2. Variances shall run with the land and are transferable with the real estate to a new owner.
3. Variances shall be decided within 60 days of the receipt of a completed application as determined by the Zoning Administrator, unless extended pursuant to Chapter 15.99 of Minnesota Statutes.
4. Failure by the owner to act in reliance on the variance within six (6) months or failure to complete the work under a variance within one year unless extended by the Board of Adjustment shall void the Variance. A second extension shall require a new public hearing. This provision shall apply to any variance outstanding at the time of the Ordinance adoption.
5. Appeals from the action of the Board of Adjustment shall be filed with the City Clerk within 30 days after Planning Commission or Board of Adjustment action, or at the next regular meeting of the City Council, whichever is later. The City Council shall hear the appeal.
6. Violation of the conditions on a variance shall void the variance.
7. The Zoning Administrator shall file a copy of all approved variances with the County Recorder within 15 days of approval at the expense of the applicant.

City of Nisswa, Minn., Land Use and Subdivision Ordinance (Dec. 17, 2008), *available at* [http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW\\_ord\\_010109.pdf](http://www.ci.nisswa.mn.us/departments/pz/ordinance/NSW_ord_010109.pdf).

## APPENDIX H

### RECENT HISTORY FOR VARIANCES

The recent history of the statutory authority to grant variances may be of help to Region 5 should it decide to propose a uniform model land use ordinance for the cities, townships and counties in its area.

### VARIANCES UNDER COUNTY ORDINANCES

#### *Prior to May 6, 2011*

Before the May 6, 2011 legislation, counties had the power to grant a variance under Minn. Stat. § 394.27, subd 7 (2010) as long as it was “in harmony with the general purposes and intent” of the ordinance.<sup>1</sup> In order for a county to grant a requested variance, the board of adjustment or planning commission would have to find that the landowner would suffer “practical difficulties or particular hardship”. Without facts to support this finding, the request for variance was denied.<sup>2</sup>

The term "hardship" meant the property could not be put to a reasonable use under the current requirements of the ordinance.<sup>3</sup> There were, however, a few caveats.

- The terms under which the variance was granted had to be “consistent with the comprehensive plan”.<sup>4</sup>
- The landowner could not have created the issue that prevented compliance with the ordinance requirements.<sup>5</sup> The issue had to be caused by circumstances “unique to the property”.<sup>6</sup>
- The variance could not “alter the essential character of the locality”.<sup>7</sup>

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<sup>1</sup> MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

- Economic considerations alone were not enough to constitute a “hardship” as long as the property could still be put to “reasonable use” under the requirements of the ordinance.<sup>8</sup>
- Variances were not permitted for uses that were prohibited in that particular zoning district.<sup>9</sup>

### ***Minnesota Supreme Court Case***

The Minnesota Supreme Court interpreted and differentiated the terms “practical difficulties” and “particular hardship” used in the statute in the case of In re Stadvold.<sup>10</sup> The Court said there were different standards depending on whether the landowner was asking for a *use* variance or an *area* variance.<sup>11</sup> A *use* variance “permits a use or development of land other than that prescribed by zoning regulations”.<sup>12</sup> An *area* variance “controls lot restrictions such as area, height, set back density and parking requirements”.<sup>13</sup> According to the Court, a landowner must show “practical difficulties” when applying for an *area* variance, and “particular hardship” when applying for a *use* variance.<sup>14</sup> If the landowner did not meet the applicable standard, the county must deny the request for a variance.<sup>15</sup>

The landowners in the Stadvold case had applied for an area variance to be able to finish construction of a house and garage on their property.<sup>16</sup> Their lot was a nonconforming lot that had been grandfathered in under Otter Tail County’s Shoreland Management Ordinance (County

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<sup>8</sup> MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties)

<sup>9</sup> *Id.*

<sup>10</sup> In re Stadvold, 754 N.W. 2d 323 (Minn. 2008); MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties)

<sup>11</sup> In re Stadvold, at 323.

<sup>12</sup> CASS COUNTY, MINN., DRAFT REV. LAND USE ORDINANCES #2005-1, 801.1-801.3 (Working Copy #2011-01, Aug. 10, 2011), A copy of this draft ordinance is also available in the Client File at the William Mitchell Rosalie Wahl Legal Practice Center. (Variance Section is also attached as Appendix E.) *See also*. In re Stadvold, 754 N.W. 2d 323, 329 (Minn. 2008) and In re Appeal of Kenney, 374 N.W.2d 271, 274 (Minn. 1985) (Setting out the definition of use and area variances).

<sup>13</sup> *Id.*

<sup>14</sup> In re Stadvold, at 323.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 325.

Ordinance):<sup>17</sup> the lot was permitted because it existed before the current ordinance's effective date and met the lot requirements of the previous ordinance, even though it did not meet the requirements of the current ordinance.<sup>18</sup> At the time of the variance request, the ordinance required certain setback requirements and required permit applicants to “stake out all lot lines and road right-of-ways” before the County performed its pre-approval inspection.<sup>19</sup> The landowners did not survey the lot to get measurements for the permit application; they relied on the stakes and pins from the original platting of the lot.<sup>20</sup> The County inspector also relied on the stakes and pins in making his measurements during the pre-approval inspection, and on August 8, 2002, the County granted approval for the permit based on these measurements.<sup>21</sup> After approval, the County inspected the lot three more times, and found nothing out of the ordinary.<sup>22</sup> The landowners completed the construction on their property and the County approved the completion on July 15, 2003.<sup>23</sup> An October 2004 survey of the property revealed that the house and garage had mistakenly been built into the setback areas.<sup>24</sup> The landowners were cited for the setback violation on July 11, 2005, and applied for a variance from the requirements on August 8, 2005.<sup>25</sup>

The Otter Tail County Board of Adjustment (Board of Adjustment) decided to treat the variance application as if the request was made before construction on the property occurred and

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<sup>17</sup>In re Stadsvold, at 325. A nonconforming lot is a previously lawful lot that now violates an amended or newly adopted zoning ordinance. (Black's Law Dictionary, 9<sup>th</sup> ed. 2009.)

<sup>18</sup>Black's Law Dictionary, 9<sup>th</sup> ed. 2009. A grandfather clause is provision that creates an exemption from the law's effect for something that existed before the law's effective date; specif., a statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect. To be grandfathered in means to cover (a person) with the benefits of a grandfather clause. (Ex. the statute sets the drinking age at 21 but grandfathers those who are 18 or older on the statute's effective date.)

<sup>19</sup>In re Stadsvold, at 326.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

denied the variance reasoning that the landowners could have reasonably built both the house and garage within the setback requirements and that the landowners did not show “adequate hardship unique to the property”.<sup>26</sup>

The landowners appealed to the Otter Tail District Court (District Court) which found the decision by the Board to be “reasonable” and granted summary judgment in favor of the County.<sup>27</sup> The landowners then appealed to the Minnesota Court of Appeals which affirmed the District Court’s decision, reasoning that the Board of Adjustment had applied the proper standard in considering the variance application, and said the decision was not arbitrary or capricious.<sup>28</sup> The landowners then appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court considered four issues:

The first issue was whether someone who owned a grandfathered, nonconforming lot must nevertheless still comply with the set-back requirements.<sup>29</sup> The Court decided that because the landowners did not argue to the board that they did not have comply with the set-back requirements, that this issue had been waived.<sup>30</sup> Therefore, they would have to comply with the set-back requirements.<sup>31</sup>

The second issue was whether the Board of Adjustment applied the appropriate standard in considering the landowners’ variance application.<sup>32</sup> The landowners argued that the Board of Adjustment should have applied the less stringent “practical difficulties” standard in considering their request for an area variance and that the more stringent standard of “particular hardship”

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<sup>26</sup> In re Stadsvold, at 326 (Minn. 2008).

<sup>27</sup> *Id.* at 327.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* See also. Sletten v. Ramsey County, 675 N.W.2d 291, 302 (Minn. 2004) (A court should not consider issues raised for the first time on appeal.)

<sup>32</sup> In re Stadsvold, at 327.

should be used when considering use variances.<sup>33</sup> The County argued that it did not matter which standard it used because the landowners could not satisfy either one.<sup>34</sup> The Court determined that the language used in the County Ordinance was identical to MINN. STAT. §394.27, subd. 7 but that this language (in both the county ordinance and the statute) was ambiguous because it only defined “hardship”, not the exact terms “practical difficulties” or “particular hardship”.<sup>35</sup> The Court presumed that the legislature intended both terms to have meaning since both were included in the final statute.<sup>36</sup> The Court next discussed use variances and area variances and concluded that based on legislative history and the definitions of use and area variance, the more stringent “particular hardship” standard was the appropriate standard to apply to use variances because use variances had the potential to change the character of a zoned district.<sup>37</sup> The less stringent “practical difficulties” standard was the appropriate standard to apply to area variances since area variances do not change the character of a zoned district.<sup>38</sup> These ideas had previously been accepted by the Minnesota Supreme Court in the Kenney case.<sup>39</sup> The Court additionally set out factors to consider under the “practical difficulties” standard.<sup>40</sup>

The third issue the Court considered was whether the Board of Adjustment appropriately denied the landowners’ application for variance when it used an “adequate hardship” standard.<sup>41</sup>

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<sup>33</sup> In re Stadsvold, at 327.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 328; MINN. STAT. §394.27, subd. 7 (2010). (Dealing with counties)

<sup>36</sup> In re Stadsvold, at 328. *See also*. MINN. STAT. § 645.16 (2006) (“Every law shall be construed, if possible, to give effect to all its provisions.”); and MINN. STAT. § 645.17(2) (2006) (“The legislature intends the entire statute to be effective and certain.”)

<sup>37</sup> In re Stadsvold, at 329. See definitions of use and area variances on p.4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 331. In re Appeal of Kenney, 374 N.W.2d 271, 274 (Minn. 1985).

<sup>40</sup> In re Stadsvold, at 328; 1) How substantial the variation is in relation to the requirement, 2) the effect the variance would have on government services, 3) whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties, 4) whether the practical difficulty can be alleviated by a feasible method other than a variance, 5) how the practical difficulty occurred, including whether the landowner created the need for the variance, 6) whether, in light of all of the above factors, allowing the variance will serve the interests of justice.

<sup>41</sup> In re Stadsvold, at 332.

The Court said the Board of Adjustment must use the “practical difficulties” standard because the request was for an area variance.<sup>42</sup>

The fourth issue the Court considered was whether the Board of Adjustment erred by treating the landowners’ variance application as if it had been made before the landowners’ constructed the house and garage on their property.<sup>43</sup> The County argued that by treating the application as such, that it would deter people from intentionally violating the ordinance by literally building first then asking for a variance later.<sup>44</sup> The Court disagreed saying that although county boards of adjustment are normally given broad discretion in their consideration of variance requests, and although preventing intentional violations was a reasonable concern, the Board could have considered the variance application after-the-fact.<sup>45</sup> The Court believed that counties could avoid intentional violations by considering factors such as whether the applicant acted in good faith, whether he attempted to comply with the ordinance, whether the county felt that the violation was willful or accidental, and whether it would serve the interests of justice for a county to grant the variance.<sup>46</sup>

The Court concluded by remanding the case back to the Board of Adjustment to determine whether the landowners’ request met the “practical difficulties” standard and for the Board of Adjustment to review the landowners’ variance request as an after-the fact application.<sup>47</sup>

## **VARIANCES UNDER CITY & TOWNSHIP ORDINANCES**

### ***Prior to May 6, 2011***

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<sup>42</sup> In re Stadsvold, at 332.

<sup>43</sup> *Id.* at 333.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* See also. In re Appeal of Kenney, 374 N.W.2d 271, 275 (Minn. 1985) (laying out the equitable factors to be considered when reviewing variance requests after-the fact).

<sup>47</sup> In re Stadsvold, at 334.



Before the May 6, 2011 legislation, cities and townships had the power to hear variance requests in situations “where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration...”.<sup>48</sup> Under the statute, a city or township would grant a variance only when such actions would be “in keeping with the spirit and intent of the ordinance”.<sup>49</sup> The statute defined the term “undue hardship” as meaning that the property could not be put to a reasonable use under the current requirements of the ordinance.<sup>50</sup> There were also caveats similar to those concerning counties:

- The landowner could not have created the issue that prevented compliance with the ordinance requirements.<sup>51</sup> The issue had to be caused by circumstances “unique to the property”.<sup>52</sup>
- If the variance were to be granted, it could not “alter the essential character of the locality”.
- Economic considerations alone were not enough to constitute an “undue hardship” as long as the property could still be put to reasonable use under the requirements of the ordinance.<sup>53</sup>

Additionally, the board of appeals and adjustments or the governing body, could not permit a variance for any use of the land that was prohibited in that particular zoning district.<sup>54</sup>

### ***Minnesota Supreme Court Case***

In the 2010 case of Krummenacher v. City of Minnetonka, the Minnesota Supreme Court interpreted the terms “undue hardship” and “reasonable use” under MINN. STAT. §462.357, subd. 6(2).<sup>55</sup> The Supreme Court held that under this statute, a city could not grant a variance if

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<sup>48</sup> MINN. STAT. §462.357, subd. 6(2) (2010). (Dealing with cities and townships)

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Krummenacher v. City of Minnetonka, 783 N.W. 2d 721 (Minn. 2010); MINN. STAT. §462.357, subd. 6(2)

the landowner could still put the property to “reasonable use” without the variance.<sup>56</sup> This meant that a landowner did not suffer “undue hardship” when denied a variance unless his property could not be put to “reasonable use” after the denial.<sup>57</sup> The way in which the Supreme Court interpreted MINN. STAT. §462.357, subd. 6(2) had the effect of making it extremely difficult for a city or township to grant a variance except in unusual or rare circumstances.<sup>58</sup>

This was a case about the proposed expansion of a nonconforming garage. The landowner was granted a variance by the City of Minnetonka in order for her to be able to expand her nonconforming garage.<sup>59</sup> The Minnetonka City Code required a 50 ft. minimum setback from the property line for all detached garages but because the garage met the standards when it was built in the 1940s; therefore, it was permitted as a nonconformity.<sup>60</sup> On March 31, 2008, the landowner applied for a variance to be able to fix issues with the garage, make aesthetic improvements and expand it to include a living space above.<sup>61</sup> The landowner and her neighbor, who was opposed to the project because he believed it would obstruct his view, both made their arguments to the City of Minnetonka Planning Commission (Planning Commission) on May 15, 2008.<sup>62</sup> The Planning Commission approved the landowner’s request for a variance because

- It believed denying the variance would cause undue hardship because of the topography of the property, width of the lot, location of the driveway and the existing vegetation.
- The nonconforming setback was a unique circumstance and would not be common to every zoned property;

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<sup>56</sup> Krummenacher v. City of Minnetonka, at 721. *See also*. MINN. STAT. §462.357, subd. 6(2) (2010). (Dealing with cities and townships) Although the Court was directing its attention to the City of Minnetonka, the statute applies to both cities and townships.

<sup>57</sup> Krummenacher v. City of Minnetonka, at 721.

<sup>58</sup> Nick Busse, *House Votes to Ease Restrictions on Zoning Variances*, SESSION DAILY (April 4, 2011).

<sup>59</sup> Krummenacher v. City of Minnetonka, at 723. (See fn. 31 for the definition of nonconforming.)

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 724.

<sup>62</sup> *Id.*

- The proposal would comply with the intent of the ordinance because it would not increase the footprint of the garage, and would comply with the other ordinance requirements for detached garages.
- The proposal would not alter the neighborhood character, rather would aesthetically enhance the appearance of the garage.<sup>63</sup>

The neighbor appealed the Planning Commission’s decision to the Minnetonka City Council (City Council); both the landowner and neighbor presented their arguments again at a June 30, 2008 public hearing.<sup>64</sup> The City Council agreed with the reasoning of the Planning Commission and upheld the decision to grant the variance.<sup>65</sup>

The neighbor then sued in the Hennepin County District Court (District Court) arguing the City Council’s finding of “undue hardship” was incorrect.<sup>66</sup> The District Court affirmed the City Council’s finding and said the Council’s decision was not arbitrary or capricious.<sup>67</sup>

The neighbor appealed to the Minnesota Court of Appeals (Court of Appeals) arguing

- The City Council was prohibited from granting a variance to allow the expansion of a nonconforming use by MINN. STAT. §462.357, subd. 1e(a).
- The landowner did not meet the requirements for “undue hardship” therefore the City Council’s findings were arbitrary and capricious.<sup>68</sup>

The Court of Appeals affirmed the District Court’s decision with respect to all the issues raised by the neighbor.<sup>69</sup>

The neighbor appealed to the Minnesota Supreme Court (Court) arguing the same issues raised in the Court of Appeals.<sup>70</sup>

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<sup>63</sup> Krummenacher v. City of Minnetonka, at 724.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 725. The neighbor served requests for more information on the City and the requests were refused but the District Court did not compel the City to produce the documents.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* See also. MINN. STAT. §462.357, subd. 1e(a) (2008). The neighbor also argued that the District Court had erred in not compelling the City to produce the requested documents

<sup>69</sup> Krummenacher v. City of Minnetonka, at 725.

<sup>70</sup> *Id.*

First, the Supreme Court said that the City Council’s decision to allow the landowner to seek a variance to expand a nonconformity was consistent with MINN. STAT. §462.357, subd. 1e(a) because the legislature gave discretion to the City to authorize such a variance.<sup>71</sup> Existing nonconforming uses must be allowed to stay as they are or must be eliminated through the use of eminent domain, but a local government is not required to permit the *expansion* of a nonconformity.<sup>72</sup> The Court believed that the section of the statute when given effect in its entirety, meaning including both (a) and (b), was consistent with the above principles and that (a) prohibited a city from “ordering the removal of nonconformities” while (b) allowed a city to permit an expansion of the nonconformity.<sup>73</sup> This meant a landowner would need to apply for a variance before building an expansion on a nonconformity and the city had the power to grant it.<sup>74</sup>

With respect to the second issue, the Court defined the standard “undue hardship” very narrowly and said that the “reasonable use” element of the “undue hardship” test was not whether the proposed use was reasonable, but rather whether there *could be* any reasonable use if the variance was denied.<sup>75</sup> There is an “undue hardship” only if there is *no* reasonable use without the variance. A city may grant a variance:

...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.

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<sup>71</sup> Krummenacher v. City of Minnetonka, at 725. *See also*. MINN. STAT. §462.357, subd. 1e (2008). The language of the statute provided that:

(a) Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, *but not including expansion*...

(b) A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.

<sup>72</sup> Krummenacher v. City of Minnetonka, at 726. *See also*. County of Freeborn v. Claussen, 203 N.W. 2d 323, 325 (1972) (Setting out rules concerning nonconforming uses).

<sup>73</sup> Krummenacher v. City of Minnetonka, at 726.

<sup>74</sup> *Id.* at 726.

<sup>75</sup> *Id.* at 732.

MINN. STAT. §462.357, subd. 6.<sup>76</sup> The statute defines the test that must be met under the “undue hardship” definition.<sup>77</sup> To get a variance, a landowner must be able to show:

- The property could not be put to reasonable use if used under conditions allowed by the official controls,
- The landowner’s issue is not created by the landowner, rather is due to circumstances that are unique to the property, and
- If the variance is granted, it will not alter the essential character of the locality.<sup>78</sup>

Additionally, a city may not grant a variance unless it is “in keeping with the spirit and intent of the ordinance”.<sup>79</sup>

For Krummenacher, that meant she was entitled to a variance only if there was no other reasonable use for the garage. The neighbor had argued to both the Court of Appeals and the Supreme Court that the landowner could still use the garage as a garage, therefore denying the landowner’s expansion was not denying all “reasonable use” of the structure and that the statute required there to be no “reasonable use” before a city could grant a variance.<sup>80</sup>

The Court of Appeals did not agree with this argument, relying on the prior case of Rowell vs. Board of Adjustment of Moorhead in which “undue hardship” was interpreted as meaning that a variance applicant had to show they would “*like to use* the property in a reasonable manner that is prohibited by the ordinance”.<sup>81</sup> In granting the variance, the city council had also used the reasoning from the Rowell case, saying that

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<sup>76</sup> Krummenacher v. City of Minnetonka at 727. *See also*. MINN. STAT. §462.357, subd. 6 (2008) (dealing with cities and townships).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 728. *See also*. MINN. STAT. §462.357, subd. 6 (2008) (dealing with cities and townships).

<sup>80</sup> Krummenacher v. City of Minnetonka, at 728.

<sup>81</sup> *Id.* at 728. *See also*. Rowell v. Board of Adjustment of Moorhead, 446 N.W.2d 917 (Minn. App. 1989).

the expansion would be a “reasonable use” and that there would be an “undue hardship” if the variance were not granted.<sup>82</sup>

The Supreme Court disagreed with both the City and the Court of Appeals, saying that the decision in Rowell was not only inconsistent with the plain language of the statute, but also inconsistent with an earlier Minnesota Supreme Court case, Curry v. Young.<sup>83</sup> In the Curry case, the Supreme Court had said that the standard was met because without the variance, the Plaintiff’s lot would not have a “reasonable use”.<sup>84</sup>

Under Curry, the landowner only gets the variance if the lot would not have a reasonable use without it; under Rowell, the landowner need only show the use with the variance would be reasonable.

In deciding Krummenacher, the Supreme Court believed that the Curry standard was consistent with the language used in the 2010 version of the statute containing the “undue hardship” language and was more stringent than the “reasonable manner” standard set out in the Rowell case.<sup>85</sup>

The Supreme Court also said that applying the “reasonable manner” standard from Rowell to the Krummenacher case would be contrary to the “practical difficulties / particular hardship” distinction the Court had just made in Stadsvold.<sup>86</sup> The Supreme Court said the Minnesota Legislature defined the “particular hardship” standard in the statute pertaining to counties using the same language as it did to define the “undue

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<sup>82</sup> Krummenacher v. City of Minnetonka, at 728.

<sup>83</sup> *Id.* at 729. *See also*. MINN. STAT. §462.357, subd. 6 (2008) (dealing with cities and townships). *See also*. Curry v. Young, 173 N.W.2d 410, 411, 415 (1969).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Krummenacher v. City of Minnetonka, at 730, In re Stadsvold, at 323.

hardship” standard in the statute pertaining to cities and townships.<sup>87</sup> Thus, the Court said, it follows that “undue hardship” is a more stringent standard than “practical difficulties”.<sup>88</sup> Under a Rowell analysis, the “undue hardship” standard was less stringent than the “practical difficulties” standard which would be contrary to Stadsvold.<sup>89</sup> As a result, the “reasonable manner” standard from Rowell was not the appropriate standard to apply and the City erred in its interpretation of the “reasonable use” factor of the “undue hardship” definition, therefore the Court did not need to review the other issues.<sup>90</sup>

The Supreme Court did not believe the City’s decision to grant the variance was arbitrary and capricious but remanded the case back to the City to review the grant using the Court’s interpretation of the standard.<sup>91</sup>

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<sup>87</sup> Krummenacher v. City of Minnetonka, at 730, MINN. STAT. §462.357, subd. 6 (2008) (Dealing with cities and townships), MINN. STAT. §394.27, subd. 7 (2008) (dealing with counties).

<sup>88</sup> *Id.*

<sup>89</sup> Rowell v. Board of Adjustment of Moorhead, at 917, In re Stadsvold, at 323.

<sup>90</sup> Krummenacher v. City of Minnetonka, at 732.

<sup>91</sup> *Id.* at 733.