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KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

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H.F. No. 52, 1st Unofficial Engrossment - 87th Legislative Session (2011-2012) Posted on Apr 14, 2011

- 1.1 A bill for an act
- 1.2 relating to local government; providing for variances from city, county, and town
- 1.3 zoning controls and ordinances;amending Minnesota Statutes 2010, sections
- 1.4 394.27, subdivision 7; 462.357, subdivision 6.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2010, section 394.27, subdivision 7, is amended to read:
- 1.7 Subd. 7. **Variances; hardship practical difficulties**. The board of adjustment shall
- 1.8 have the exclusive power to order the issuance of variances from the ~~terms requirements~~
- 1.9 of any official control including restrictions placed on nonconformities. Variances shall
- 1.10 only be permitted when they are in harmony with the general purposes and intent of the
- 1.11 official control ~~in cases when there are practical difficulties or particular hardship in~~
- 1.12 ~~the way of carrying out the strict letter of any official control, and when the terms of~~
- 1.13 ~~the variance variances~~ are consistent with the comprehensive plan. "~~Hardship~~" as used
- 1.14 ~~in connection with the granting of a variance means the property in question cannot be~~
- 1.15 ~~put to a reasonable use if used under the conditions allowed by the official controls; the~~
- 1.16 ~~plight of the landowner is due to circumstances unique to the property not created by the~~
- 1.17 ~~landowner; and the variance, if granted, will not alter the essential character of the locality.~~
- 1.18 Variances may be granted when the applicant for the variance establishes that there
- 1.19 are practical difficulties in complying with the official control. "Practical difficulties,"
- 1.20 as used in connection with the granting of a variance, means that the property owner
- 1.21 proposes to use the property in a reasonable manner not permitted by an official control;
- 1.22 the plight of the landowner is due to circumstances unique to the property not created by
- 1.23 the landowner; and the variance, if granted, will not alter the essential character of the
- 1.24 locality. Economic considerations alone shall do not constitute a hardship if a reasonable
- 2.1 use for the property exists under the terms of the ordinance practical difficulties. Practical
- 2.2 difficulties include, but are not limited to, inadequate access to direct sunlight for solar
- 2.3 energy systems. Variances shall be granted for earth sheltered construction as defined in
- 2.4 section 216C.06, subdivision 14, when in harmony with the official controls. No variance
- 2.5 may be granted that would allow any use that is ~~prohibited~~ not allowed in the zoning
- 2.6 district in which the subject property is located. The board of adjustment may impose
- 2.7 conditions in the granting of variances to, A condition must be directly related to and must
- 2.8 bear a rough proportionality to the impact created by the variance ~~insure compliance~~
- 2.9 and to protect adjacent properties and the public interest. The board of adjustment may
- 2.10 consider the inability to use solar energy systems a "hardship" in the granting of variances.
- 2.11 **EFFECTIVE DATE.**This section is effective the day following final enactment.
- 2.12 Sec. 2. Minnesota Statutes 2010, section 462.357, subdivision 6, is amended to read:
- 2.13 Subd. 6. **Appeals and adjustments.** Appeals to the board of appeals and
- 2.14 adjustments may be taken by any affected person upon compliance with any reasonable

- 2.15 conditions imposed by the zoning ordinance. The board of appeals and adjustments has
- 2.16 the following powers with respect to the zoning ordinance:
- 2.17 (1) To hear and decide appeals where it is alleged that there is an error in any
- 2.18 order, requirement, decision, or determination made by an administrative officer in the
- 2.19 enforcement of the zoning ordinance.
- 2.20 (2) To hear requests for variances from the ~~literal provisions of the ordinance~~
- 2.21 ~~in instances where their strict enforcement would cause undue hardship because of~~
- 2.22 ~~circumstances unique to the individual property under consideration, and to grant such~~
- 2.23 ~~variances only when it is demonstrated that such actions will be in keeping with the spirit~~
- 2.24 ~~and intent of the ordinance. "Undue hardship" as used in connection with the granting of a~~
- 2.25 ~~variance means the property in question cannot be put to a reasonable use if used under~~
- 2.26 ~~conditions allowed by the official controls, requirements of the zoning ordinance including~~
- 2.27 ~~restrictions placed on nonconformities. Variances shall only be permitted when they are in~~
- 2.28 ~~harmony with the general purposes and intent of the ordinance and when the variances are~~
- 2.29 ~~consistent with the comprehensive plan. Variances may be granted when the applicant for~~
- 2.30 ~~the variance establishes that there are practical difficulties in complying with the zoning~~
- 2.31 ~~ordinance. "Practical difficulties," as used in connection with the granting of a variance,~~
- 2.32 ~~means that the property owner proposes to use the property in a reasonable manner not~~
- 2.33 ~~permitted by the zoning ordinance; the plight of the landowner is due to circumstances~~
- 2.34 ~~unique to the property not created by the landowner; and the variance, if granted, will not~~
- 2.35 ~~alter the essential character of the locality. Economic considerations alone shall do not~~
- 3.1 ~~constitute an undue hardship if reasonable use for the property exists under the terms of~~
- 3.2 ~~the ordinance. Undue hardship also includes practical difficulties. Practical difficulties~~
- 3.3 ~~include, but is are not limited to, inadequate access to direct sunlight for solar energy~~
- 3.4 ~~systems. Variances shall be granted for earth sheltered construction as defined in section~~
- 3.5 ~~216C.06, subdivision 14 , when in harmony with the ordinance. The board of appeals and~~
- 3.6 ~~adjustments or the governing body as the case may be, may not permit as a variance any~~
- 3.7 ~~use that is not permitted allowed under the zoning ordinance for property in the zone~~
- 3.8 ~~where the affected person's land is located. The board or governing body as the case~~
- 3.9 ~~may be, may permit as a variance the temporary use of a one family dwelling as a two~~
- 3.10 ~~family dwelling. The board or governing body as the case may be may impose conditions~~
- 3.11 ~~in the granting of variances to insure compliance and to protect adjacent properties. A~~
- 3.12 ~~condition must be directly related to and must bear a rough proportionality to the impact~~
- 3.13 ~~created by the variance.~~
- 3.14 **EFFECTIVE DATE.**This section is effective the day following final enactment.

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