



**CITY OF ISANTI  
PLANNING COMMISSION MEETING  
TUESDAY, August 18, 2020  
Immediately Following the 7:00pm City Council Meeting  
CITY HALL**

- 1. Meeting Opening**
  - A. Call to Order
  - B. Pledge of Allegiance
  - C. Roll Call
  - D. Agenda Modifications
- 2. Meeting Minutes**
  - A. Approval of Minutes from July 21, 2020 Planning Commission Meeting
- 3. Public Hearing**
  - A. Request from Scott Zimprich for a for a garage to exceed 580 square feet and to be larger than the house at 201 Broadway
- 4. Other Business**
- 5. Discussion Item**
- 6. Adjournment**

## CITY OF ISANTI

### PLANNING COMMISSION MEETING

TUESDAY, July 21, 2020

Immediately following the 7:00 P.M City Council Meeting;

#### 1. Meeting Opening

- A. Call to Order: Chair Johnson called the meeting to order at 8 p.m.
- B. Pledge of Allegiance
- C. Roll Call: Members present: Jeff Johnson, Dan Collison, Steve Lundeen, Jimmy Gordan, Paul Bergley, Arissya Simon, Alexander Collins.  
Members Absent: None  
Staff present: Community Development Director Sheila Sellman, Community Development Specialist Ryan Saltis
- D. Agenda Modifications: None

#### 2. Meeting Minutes

- A. Approval of Minutes from June 16, 2020 Planning Commission Meeting motion by Collison, second by Bergley motion passes 7-0.

#### 3. Public Hearing

- A. Request by Serenity Circle for approval of a Site Plan required under City Ordinance 44, Section 18, Subd. 6 (D). Said request is for an office building at 201 Main Street 16.050.0770. Saltis explained that a new office building is proposed at the vacant lot located at the corner of Main St and 2<sup>nd</sup> Ave SW. The lot was previously rezoned from R-3A, Low Density Multiple-Family Residential to the B-1, Central Business District to allow for office uses on the parcel. Saltis explained the proposed site plan configuration consisting of the building, a four-stall parking lot, utilities, the extended sidewalks and street network and surrounding landscaping. The site plans for the office building were to comply with the standards set for the B-1 Zoning District as well as the standards set by the Downtown Overlay District for approval. The Planning Commission questioned whether the four off-street parking stalls were sufficient for the business. City staff explained that the four off-street parking stalls were the minimum number of stalls the business would be allowed while following city code for the downtown overlay district. The applicant, Deanna Bunes was present at the meeting and available for questions. No one from the public was present to speak at the public hearing. The Planning Commission recommended approval of the site plans for the office building at 201 Main St W with conditions listed in the City Engineer's memo, dated 7/1/2020 and the City Staff memo, dated 7/21/2020. Motion for approval of site plans by Lundeen, 2<sup>nd</sup> by Gordon, motion passed 7-0.

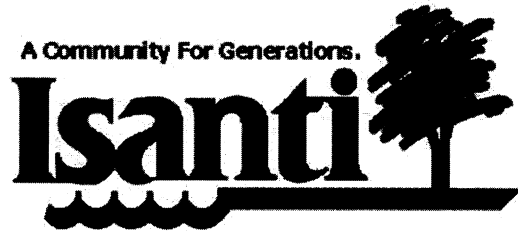
- B. Ordinance Amending the City Zoning Code, Ordinance 445, Section 3, Subd 2 Zoning Map. Sellman explained that the R-1, Rural Residential Zoning District was adopted at the June 16<sup>th</sup> City Council meeting, and now those properties shall be rezoned on the Zoning Map. City Staff held a neighborhood meeting on July 14<sup>th</sup> to discuss the rezoning of the properties to the R-1 Zoning District. No one from the public was present to speak at the public hearing. Motion for approval to amend the Zoning Map by Lundeen, 2<sup>nd</sup> by Simon, motion passed 7-0.

**4. Other Business:** None

**5. Discussion Item:** None

**6. Adjournment:** Motion by Bergley, 2<sup>nd</sup> by Collins to adjourn, motion passed 7-0 meeting adjourned at 8:25 p.m.

Respectfully submitted by Ryan Saltis, Community Development Specialist



## MEMORANDUM

TO: Planning Commission

FROM: Sheila Sellman, Community Development Director

DATE: August 18, 2020

SUBJECT: Variance request for a garage to exceed 580 square feet and to be larger than the house at 201 Broadway

---

**Request:** The applicant Scott Zimprich is requesting a variance to build a 580 square foot detached garage in the R-2 zoning district, which exceeds the size of the primary structure.

### Overview/Background

On May 12, 2020 the applicant applied for a building permit to construct a detached garage at 720 square feet. On May 14, 2020 the Community Development Director (CDD) e-mailed him and explained that the proposed garage exceeds the size limit according to city code. He e-mailed back with some questions and the last correspondence was an e-mail sent by the CDD on May 25<sup>th</sup> outlining his options which included the following:

- 1) Build the detached garage at 580 square feet and there are no other steps
- 2) Build the garage attached to the house and it can possibly be bigger but can't exceed the size of the house
- 3) Apply for a variance - I have attached the application and calendar. This will take a public hearing at the Planning Commission and properties within 350' of your property will be noticed as well as a notice in the paper. The Planning Commission makes a recommendation to the City Council. Please call me if you would like to discuss.

On July 13, 2020 a stop work order was issued for this property because a building permit was never issued. The garage foundation has already been poured. This was never approved.

City Code defines Accessory Structure as A subordinate attached or detached building located on the same lot as the principal building, of which the use is incidental and accessory to the use of the principal building. Therefore, in addition to the variance for the size limit of 580 square feet, the garage can not exceed the size of the house, the applicants house is 624 square feet. Section 13 Article four has a maximum detached accessory structure limit of 580 square feet for parcels that are less than one acre.

In review of the standards established within Section 21 Administration and Enforcement, Article 5 Variances, Subdivision 4 Procedures (D), the following conclusions have been made (*conclusions to each requirement are shown in italics*):

An application for a variance shall not be approved unless the variance, if permitted, is in harmony with the general purposes and intent of the ordinance and is consistent with the Comprehensive Plan and findings are made that failure to grant the variance would result in practical difficulties on the applicant. Practical difficulties used in connection with the granting of a variance, means that the property owner meets all of the following criteria:

- A. The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance. *An accessory structure larger than the primary structure and larger than what is permitted by code is not a reasonable use of the land.*
- B. The plight of the landowner is due to circumstances unique to the property and has not been caused by the landowner. *This property is not unique and the circumstances are directly caused by the owner by starting the work without a permit and not meeting size requirements.*
- C. A variance, if granted, will not alter the essential character of the locality. *Granting a variance for an accessory structure to exceed the size of the primary structure does alter the essential character.*
- D. Practical difficulties include but are not limited to, inadequate access to direct sunlight for solar energy systems. *Not applicable.*
- E. Economic considerations alone do not constitute practical difficulties. *Economic considerations do not play a role in this situation*

**Staff Recommendation:**

Staff recommends denial of the variance because the proposed garage is not in harmony with the general intent of the ordinance and does not meet the practical difficulties. In addition, the applicant started the work without a permit when he was specifically told the proposed garage is too big.

**Attachments**

- Memo from League of MN Cities
- Applicant's memo
- Site plan

## Land Use Variances

*Learn about variances as a way cities may allow an exception to part of their zoning ordinance. Review who may grant a variance and how to follow and document the required legal standard of “practical difficulties” (before 2011 called “undue hardship”). Links to a model ordinance and forms for use with this law.*

### RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 6.

Minn. Stat. § 462.357, subd. 6.

Minn. Stat. § 462.357, subd. 6.

## I. What is a variance

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner will seek a variance to allow a particular use of their property that would otherwise not be permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota—state law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located.

## II. Granting a variance

Minnesota law provides that requests for variances are heard by a body called the board of adjustment and appeals; in many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

### **III. Legal standards**

When considering a variance application, a city exercises so-called “quasi-judicial” authority. This means that the city’s role is limited to applying the legal standard of practical difficulties to the facts presented by the application. The city acts like a judge in evaluating the facts against the legal standard. If the applicant meets the standard, then the variance may be granted. In contrast, when the city writes the rules in zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

#### **A. Practical difficulties**

“Practical difficulties” is a legal standard set forth in law that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

##### **1. Reasonableness**

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

##### **2. Uniqueness**

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

## RELEVANT LINKS:

2011 Minn. Laws, ch. 19,  
*amending* Minn. Stat. §  
462.357, subd. 6.

*Krummenacher v. City of  
Minnetonka*, 783 N.W.2d 721  
(Minn. June 24, 2010).

Minn. Stat. § 462.357, subd.  
6.  
Minn. Stat. § 394.27, subd. 7.

See Section I, *What is a  
variance*.

See Section IV-A, *Harmony  
with other land use controls*.

### 3. Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

### B. Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. After a long and contentious session working to restore city variance authority, the final version of HF 52 supported by the League and allies was passed unanimously by the Legislature. On May 5, Gov. Dayton signed the new law. It was effective on May 6, the day following the governor’s approval. Presumably it applies to pending applications, as the general rule is that cities are to apply the law at the time of the decision, rather than at the time of application.

The 2011 law restores municipal variance authority in response to a Minnesota Supreme Court case, *Krummenacher v. City of Minnetonka*. It also provides consistent statutory language between city land use planning statutes and county variance authority, and clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

In *Krummenacher*, the Minnesota Supreme Court narrowly interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test is not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance. The new law changes that factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. Also included is a sentence new to city variance authority that was already in the county statutes.



## RELEVANT LINKS:

*Issuance of Variances*, LMC Model Ordinance.

*Variance Application*, LMC Model Form.  
*Adopting Findings of Fact*, LMC Model Resolution.

Minn. Stat. § 462.357, subd. 6.

See LMC information memo, *Taking the Mystery out of Findings of Fact*.

Minn. Stat. § 462.357, subd. 6.

## C. City ordinances

Some cities may have ordinance provisions that codified the old statutory language, or that have their own set of standards. For those cities, the question may be whether you have to first amend your zoning code before processing variances under the new standard. A credible argument can be made that the statutory language pre-empts inconsistent local ordinance provisions. Under a pre-emption theory, cities could apply the new law immediately without necessarily amending their ordinance first. In any regard, it would be best practice for cities to revisit their ordinance provisions and consider adopting language that mirrors the new statute.

The models linked at the left reflect the 2011 variance legislation. While they may contain provisions that could serve as models in drafting your own documents, your city attorney would need to review prior to council action to tailor to your city's needs. Your city may have different ordinance requirements that need to be accommodated.

## IV. Other considerations

### A. Harmony with other land use controls

The 2011 law also provides that: "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan." This is in addition to the three-factor practical difficulties test. So a city evaluating a variance application should make findings as to:

- Is the variance in *harmony with* the purposes and intent of the ordinance?
- Is the variance *consistent with* the *comprehensive plan*?
- Does the proposal put property to use in a *reasonable manner*?
- Are there *unique circumstances* to the property not created by the landowner?
- Will the variance, if granted, alter the *essential character* of the locality?

### B. Economic factors

Sometimes landowners insist that they deserve a variance because they have already incurred substantial costs or argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties. Rather, practical difficulties exist only when the three statutory factors are met.

## RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 6.

### **C. Neighborhood opinion**

Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. Residents can often provide important facts that may help the city in addressing these factors, but unsubstantiated opinions and reactions to a request do not form a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, the decision could be overturned by a court.

### **D. Conditions**

A city may impose a condition when it grants a variance so long as the condition is directly related and bears a rough proportionality to the impact created by the variance. For instance, if a variance is granted to exceed an otherwise applicable height limit, any conditions attached should presumably relate to mitigating the effect of excess height.

## **V. Variance procedural issues**

### **A. Public hearings**

Minnesota statute does not clearly require a public hearing before a variance is granted or denied, but many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

### **B. Past practices**

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not generally bound by decisions made for prior variance requests. If a city finds that it is issuing many variances to a particular zoning standard, the city should consider the possibility of amending the ordinance to change the standard.

## RELEVANT LINKS:

Minn. Stat. § 15.99.

Minn. Stat. § 15.99, subd. 2.

See LMC information memo,  
*Taking the Mystery out of  
Findings of Fact.*

Minn. Stat. § 15.99, subd. 2.

Jed Burkett  
LMCIT Land Use Attorney  
jburkett@lmc.org  
651.281.1247

### C. Time limit

A written request for a variance is subject to Minnesota's 60-day rule and must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is deemed an approval.

### D. Documentation

Whatever the decision, a city should create a record that will support it. In the case of a variance denial, the 60-day rule requires that the reasons for the denial be put in writing. Even when the variance is approved, the city should consider a written statement explaining the decision. The written statement should explain the variance decision, address each of the three practical difficulties factors and list the relevant facts and conclusions as to each factor.

If a variance is denied, the 60-day rule requires a written statement of the reasons for denial be provided to the applicant within the statutory time period. While meeting minutes may document the reasons for denial, usually a separate written statement will need to be provided to the applicant in order to meet the statutory deadline. A separate written statement is advisable even for a variance approval, although meeting minutes could serve as adequate documentation, provided they include detail about the decision factors and not just a record indicating an approval motion passed.

## VI. Variances once granted

A variance once issued is a property right that "runs with the land" so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies.

## VII. Further assistance

If you have questions about how your city should approach variances under this statute, you should discuss it with your city attorney. You may also contact League staff.

To Whom it May Concern:

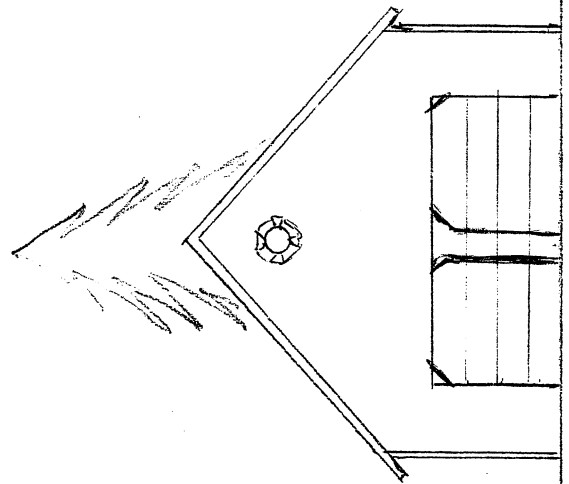
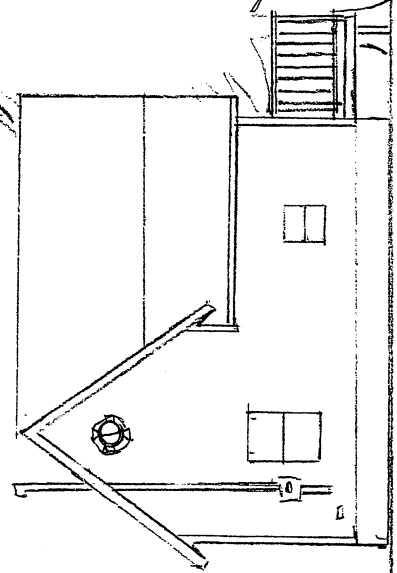
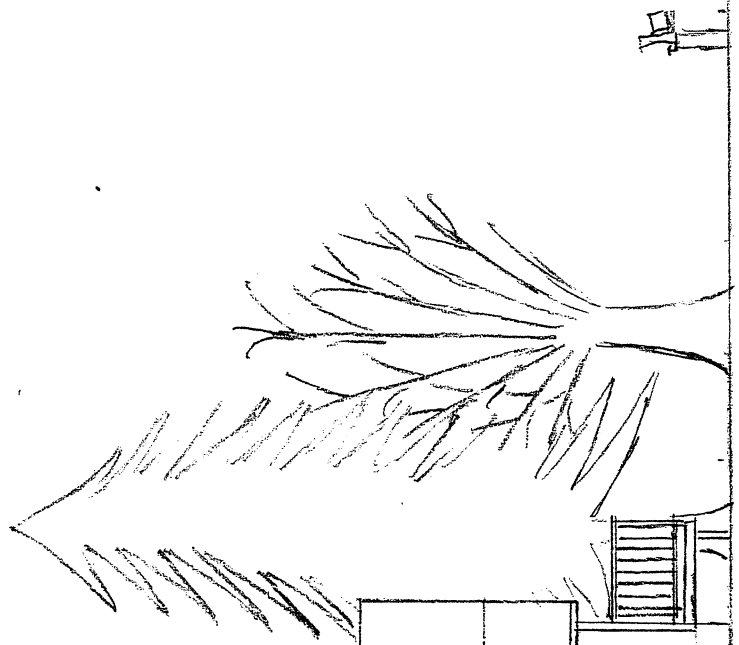
I am looking at building a garage for my home located at 201 Broadway St. SE. This home currently does not have a garage on the property. I would like to build a 26ftx28ft two stall garage. The current city limit is a 24ftx24ft. I have included my building plans for this project. I would like to build this garage so I can fit two full size vehicles and a little work bench. At the current limit of 24x24 you cannot fit a full-size truck in and walk around all sides of the garage. I would like to extend the size of the garage by 2 feet on the on side and 4 feet on the other side. I feel like this garage will fit in with the neighborhood. There are several garages on my street with garages that are much larger than what I would like to build. If you would consider passing this variance I would love to have a garage on my property.

Sincerely,

Scott Zimprich

A handwritten signature in black ink, appearing to read "Scott Zimprich", written in a cursive style.

SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS  
THE WEST 10.5 FEET THEREOF.



1000 10/1