

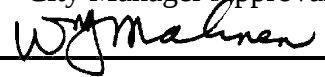
REQUEST FOR COUNCIL DISCUSSION

DATE: 7/18/2011
ITEM NO: 13.c

Division Approval



City Manager Approval



Item Description: Request by Roseville Planning Division for approval of a **zoning text amendment** pertaining to variances (PROJ-0017)

1.0 BACKGROUND

- 1.1 The substantial updates to Roseville's Zoning Code, which were the focus of much of the Planning Commission's efforts in 2010, were approved by the City Council on December 13, 2010 and became effective when the ordinance summary was published in the Roseville-Little Canada Review on December 21, 2010. At that time, however, the language governing how variance applications are considered and reviewed was left largely unchanged until State Statute 462.357 subd. 6 was revised in response to case law (i.e., *Krummenacher v City of Minnetonka*) from the Minnesota Supreme Court in the summer of 2010.
- 1.2 Cities across Minnesota had been increasingly lax in the interpretation of "reasonable use" in order to approve variances required to allow all sorts of seemingly "reasonable" residential improvements. But the Supreme Court's decision essentially reaffirmed that variances existed only as a tool to provide relief to property owners when some unique circumstances on a specific property conspire with the zoning code to effectively prohibit the any/all "reasonable" use of the property. As of May 5, 2011, the statute authorizing Cities to consider variances was modified to allow variances to be granted where there are "practical difficulties" with meeting the letter of a zoning ordinance, which is more or less consistent with the way Cities had been operating for several years based on previous case law that supported such a practice. The proposed amendments are shown in **bold** and ~~strike through~~ text in the draft ordinance, included with this report as Attachment A.

2.0 PUBLIC COMMENT

The duly-noticed public hearing for the proposed TEXT AMENDMENT was held by the Planning Commission on July 6, 2011; draft minutes of the public hearing are included with this staff report as Attachment B. No members of the public have provided comment at the public hearing or otherwise and, after closing the public hearing and discussing the proposal, the Planning Commission voted unanimously (i.e., 5-0) to recommend approval of the proposed Zoning Code TEXT AMENDMENT.

3.0 SUGGESTED ACTION

Discuss the proposed Zoning Code TEXT AMENDMENT in preparation for considering adoption of an ordinance on July 25, 2011.

Prepared by: Associate Planner Bryan Lloyd (651-792-7073)

Attachments: A. Draft Ordinance

B. Draft 7/6/2011 public hearing minutes

City of Roseville

ORDINANCE NO. _____

AN ORDINANCE AMENDING SELECTED TEXT OF SECTION 1009.04 (VARIANCES) OF
TITLE 10 "ZONING CODE" OF THE CITY CODE

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. Purpose: The Roseville City Code is hereby amended as follows to conform to recent revisions to MN Stat. 462.257, subd. 6 authorizing Cities to grant zoning variances.

SECTION 2. Section 1009.04 is hereby amended as follows:**1009.04 Variances:**

- A. **Purpose:** Each zoning classification indicates specific development standards such as setback and height restrictions. There are occasions, however, when the strict application of such standards may be inappropriate because of ~~special characteristics of unique circumstances to~~ the property. The variance procedure is **authorized by MN Stat. 462.357, subd. 6 and is** designed to permit adjustment to the zoning regulations where there are ~~special or extraordinary circumstances~~ **practical difficulties** applying to a parcel of land or building that prevent the property from being used to the extent intended by the zoning. ~~Special-Unique~~ circumstances may include factors such as the size, shape, topography, vegetation, wetlands, or other ~~unique-such~~ characteristics of the land. Variances should not be granted to residential density standards or type of use.
- B. **Applications:** The owner of property on which a variance is proposed shall file an application for approval of the variance by paying the fee set forth in Chapter 314 of this Code and submitting a completed application form and supporting documents as set forth on the application form. Complete applications shall be reviewed in a public hearing according to the process set forth in Chapter ~~1002108~~ **108 of this Code**. If a proposed variance is denied, an application for substantially the same variance on the same property shall not be accepted within 1 year of the date of the denial.
- C. **Approval:** **The City 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.** In order to approve a variance request, the Variance Board shall find based on the application submitted:
1. ~~Special circumstances or conditions, fully described in the findings, apply to the land or building for which the variance is sought, but do not apply generally to land or buildings in the neighborhood~~ **The proposal is consistent with the Comprehensive Plan;**
 2. **The proposal is in harmony with the purposes and intent of the zoning ordinances;**
 3. **The proposal puts the subject property to use in a reasonable manner;**

36 **4. There are unique circumstances to the property which were not created by the**
37 **landowner; and**

38 ~~25. Said circumstances or conditions are such that the strict application of the provisions of~~
39 ~~this ordinance would deprive the applicant of the reasonable use of such land or~~
40 ~~buildings~~**The variance, if granted, will not alter the essential character of the**
41 **locality.**

42 **D. Validation and Expiration:** A variance approval shall be validated by the applicant through
43 the commencement of any necessary construction (subject to the permit requirements of Title
44 9 of this Code) authorized by the variance within 1 year of the date of the approval. A
45 variance approval shall automatically expire if the approval is not validated pursuant this
46 section. Notwithstanding this time limitation, the Variance Board may approve extensions of
47 the time allowed for validation of the variance approval if requested in writing by the
48 applicant; extension requests shall be submitted to the Community Development Department
49 and shall identify the reason(s) why the extension is necessary along with an anticipated
50 timeline for validation of the variance approval.

51 **SECTION 3. Effective Date:** This ordinance amendment to the Roseville City Code
52 shall take effect upon passage and publication.

53 Passed this 25th day of July 2011

PROJECT FILE 0017

Request by Roseville Planning Division for approval of a zoning text amendment to ensure that variance requests are handles in conformance with the revisions MN Stat. 462.357, subd. 6

Chair Boerigter opened the Public Hearing at approximately 7:54 p.m.

Associate Planner Bryan Lloyd briefly reviewed the requested amendments to comply with recent legislation and modified statutory language, as detailed in the Request for Planning Commission Action dated July 6, 2011.

Mr. Paschke noted that this modified language had been reviewed and vetted by the City Attorney to be consistent with state statute.

Member Boguszewski noted language in the Purpose Statement (1009.04 Variances: Purpose Statement) that referred to “special or extraordinary circumstances) being struck, and replaced with “practical difficulties;” and other similar references and whether they were consistent, or should all be changed from “special circumstances or conditions” to “practical difficulties.”

Mr. Lloyd opined that the list did include some useful instruction about the types of practical difficulties that were being addressed; but the purpose of the proposed language was to suggest that variances were not to be used as a convenience, but that “special circumstances” were required. Mr. Lloyd further opined that using “practical difficulties” would serve the same purpose as suggested by Member Boguszewski.

Chair Boerigter questioned whether simply using “characteristics” and “circumstances” was sufficient, and eliminating the word “special.”

Member Strohmeier questioned if the intent of these revisions was basically intended to put the City language into compliance with State law; with Mr. Lloyd responding affirmatively, that it took into account relaxed state standards based on the most recent legislation.

Chair Boerigter asked if Section C (Approval) was new language

Mr. Lloyd responded affirmatively; noting that the C city has always been able to impose conditions, even if language in previous versions of the code left out that implication in favor of the common knowledge that conditions could be imposed on any land use item. Mr. Lloyd advised that the newly added language as proposed was directed by state statute and at the recommendation of the City Attorney to cover all bases.

Chair Boerigter questioned if Section C.4 related to “unique circumstances” to the property was pulled from the new statute.

Mr. Lloyd was unsure if it was from state statute or not; but noted that all three were provided as model language from the League of Minnesota Cities (LMC)’s General Counsel; and what the state statute provisions would mean.

Chair Boerigter suggested that in Section A (Purpose), language should say “unique circumstances,” instead of “special characteristics” to be internally consistent within the document.

Chair Boerigter closed the Public Hearing at approximately 8:02 p.m., with no one appearing for or against.

MOTION

Member Boerigter moved, seconded by Member Boguszewski to RECOMMEND TO THE City Council approval of an amendment to Section 1009.04 of the City Code; *as amended*:

- o **Section A: revise language from “special or extraordinary circumstances;” and “special characteristics” to “unique” circumstances or characteristics.**

Ayes: 5

Nays: 0

Motion carried.