

TOWN OF EUREKA, DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. 2011-04

AN ORDINANCE AMENDING THE TOWN ZONING ORDINANCE TO REVISE STANDARDS FOR CONSIDERING A VARIANCE

THE TOWN BOARD OF EUREKA TOWNSHIP HEREBY ORDAINS:

1. Amendment. Ordinance 2, Chapter 2, Section 1(C) is hereby amended as follows (new text underlined, deleted text ~~struck through~~):

C. Variances. Grant variances or relief from literal ordinance requirements in accordance with the provisions of Ordinance 3, Chapter 4, Section ~~14~~ 16. 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~~ practical difficulties, and to grant such variances only when it is demonstrated that such actions will be keeping with the spirit and intent of the Ordinance. The Board of Adjustments and Appeals 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 of Adjustments and Appeals may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The Board of Adjustments and Appeals may impose conditions in the granting of variances to ensure compliance and to protect adjacent properties. Conditions imposed must be directly related to and must bear a rough proportionality to the impact created by the variance.

2. Amendment. Ordinance 3, Chapter 4, Section 16 is hereby amended as follows (new text underlined, deleted text ~~struck through~~):

Section 16 - VARIANCES

A. Criteria For Granting Variances

The following criteria shall be used when considering the issuance of a variance:

1. The proposed use is not prohibited in the zoning district in which the subject property is located.
2. The variance must be in harmony with the general purpose and intent of this Ordinance.

3. The terms of the variance must be consistent with the comprehensive plan.
4. The landowner must show that the variance is necessary to alleviate practical difficulties ~~or particular hardship~~ resulting from strict application of the ordinance.

~~“Undue Hardship”~~ “Practical difficulties” as used in connection with the granting of a variance means:

- a. ~~The property in question cannot be put to a reasonable use if used under the conditions allowed by this ordinance~~ The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner ~~or a previous landowner;~~
- c. The variance, if granted, will not alter the essential character of the locality.

If the variance request meets all of the conditions cited above, the variance may be granted. Economic considerations alone shall not constitute a ~~hardship if a reasonable use for the property exists under the terms of this Ordinance~~ practical difficulties.

B. Procedure

1. The person applying for a variance shall fill out and submit to the Zoning Administrator a variance application which shall include a statement of the difficulties ~~or particular hardships~~ claimed, along with the filing fee and escrow.
2. The Zoning Administrator shall provide landowners within one thousand (1,000) feet of the applicant’s property with notification of the application for a variance via first class mail.
3. The Zoning Administrator shall refer the application along with all related information to the Planning Commission ~~acting in an advisory role to the Board of Adjustments and Appeals~~ for review and report in accordance with Minnesota Statutes, § 462.354, subd. 2.
4. ~~The Planning Commission shall hold a public hearing on the proposal. Notice of the time, place and purpose of the public hearing shall be according to Minnesota Statutes 462.354 Subd. 2.~~

5. The applicant or a legally authorized representative ~~shall~~ may appear before the Planning Commission ~~at the public hearing~~ in order to ~~present evidence concerning~~ explain the proposed variance.
6. The Planning Commission, in reporting on the proposed variance, may recommend the imposing of conditions on the granting of variances to ensure ~~compliance and to protect adjacent properties and the public interest~~ consistency with the Town's Comprehensive Plan. Proposed conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. ~~The Board of Adjustments and Appeals may place additional conditions upon the issuance of a variance.~~
7. The Planning Commission ~~shall make a finding of facts and~~ may recommend to the Board of Adjustments and Appeals such actions or conditions relating to the request. ~~Such findings shall be entered in and made a part of the written record of the Board of Adjustments and Appeals' meeting.~~
8. ~~Upon receiving the report and recommendation of the~~ Following the review and report of the Planning Commission, or thirty-five days after receiving the request if the Planning Commission has not issued a report, the Town Board, acting as the Board of Adjustments and Appeals, shall place the ~~report~~ request on the agenda for a public hearing at its ~~the~~ next regular meeting. At least ten days prior to the hearing, notice of the time, place and purpose of the public hearing shall be posted at the Town Hall and mailed to each owner of property situated wholly or partly within 1,000 feet of the boundaries of the property proposed to receive a variance. Failure to give mailed notice, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this requirement has been made.
9. ~~Upon receiving the report and recommendation of the Planning Commission, the~~ The Town Board, acting as the Board of Adjustments and Appeals shall ~~either:~~ conduct a hearing on the variance request. The Board shall permit the applicant to present evidence in documentary or testimonial form to establish eligibility for the requested variance. If the Planning Commission has considered the variance request, the Board shall admit the Planning Commission's report into the record, either as a document or through testimony of a representative chosen by the Planning Commission. The Board shall allow time for citizens to testify about the proposed variance, but may impose a reasonable time limit upon the testimony and may require speakers to sign up in advance of the hearing.

Following Planning Commission and public testimony, the Board shall afford the applicant an opportunity to offer matters in rebuttal or reply to any issue raised during the hearing. The Board shall provide for a written record of its proceedings in the form of minutes, written findings and final orders upon requests before it. The minutes kept by the Board need not be verbatim; an applicant seeking a verbatim record shall be permitted to make a recording of the proceedings or have a transcriptionist present at the hearing, at the applicant's expense.

- ~~a. Approve or disapprove the request as recommended by the Planning Commission; or~~
 - ~~b. Approve or disapprove the recommendation of the Planning Commission with modifications, alterations or differing conditions. Such modifications or differing conditions shall be in writing and made part of the Board of Adjustments and Appeals' records; or~~
 - ~~c. Refer the recommendation back to the Planning Commission for further consideration. This procedure shall be followed only one time for each variance request. If the request is referred back to the Planning Commission, the applicant shall be notified of the extension of time line for action on the request.~~
10. After closing the hearing, the Board of Adjustments and Appeals shall deliberate and reach a decision on the variance request. The Board's final decision shall be issued in a written final order on the request. Approval of variances or appeals shall require passage by a minimum of three (3) members of the Board of Adjustments and Appeals. The Board may impose conditions in the granting of variances, provided such conditions are directly related to and in rough proportionality to the impact created by the variance. The Zoning Administrator or Town Clerk shall notify the applicant of the Board of Adjustments and Appeals' action.
 11. ~~Decisions of the Planning Commission shall be advisory to the Board of Adjustments and Appeals. The decisions of the Board of Adjustments and Appeals shall be subject to judicial review.~~
 12. No resubmission of a variance application will be allowed for six (6) months without new evidence related to the variance.
 13. Granted variances become void if the applicant does not proceed substantially on the work within six (6) months. To proceed

substantially means to make visible improvement to the property. Up to two (2) extensions of not more than six (6) months each may be granted by the Board of Adjustments and Appeals for good cause.

14. Applications for variances will not be accepted from anyone who is not an owner of land for which the application is made.
15. All variances that are granted by the Board of Adjustments and Appeals shall be recorded at the office of the Dakota County Recorder.

3. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

4. Effective Date. This ordinance shall be in full force and effect from and after its passage and publication according to law.

EUREKA TOWNSHIP, STATE OF MINNESOTA

Nanett Sandstrom
Town Clerk

Brian Budenski
Chair, Eureka Township Board

Date: August 15, 2011

Date: August 15, 2011

Summary of Ordinance 2011-04 approved by Town Board and published in the Thisweek Newspaper on August 19, 2011.