



Minneapolis Zoning Board of Adjustment

2011 Annual Report



Board of Adjustment Members*

Name	Appointing Agency	Date of original appointment	Term currently being served	Ward
Matt Perry (Chair)	City Council	06/17/2005	Third	13
Matt Ditzler (Vice Chair)	City Council	06/17/2005	Third	5
Sean Cahill	City Council	05/28/2010	First	10
John Finlayson	City Council	08/27/1999	Fifth	13
Souliyahn Keobounpheng	City Council	05/28/2010	First	5
James Nutt	City Council	05/28/2010	First	1
Daniel Ogiba	City Council	07/01/2011	First	7
Dick Sandberg	City Council	05/01/2008	Second	7
Ami Thompson	City Council	07/01/2011	First	9

*Membership as of 12/31/2011

Board of Adjustment

The board of adjustment shall have the following powers and duties in connection with the administration of this zoning ordinance:

(1) To hear and decide applications for variances from the provisions of this zoning ordinance pursuant to the procedures and standards set forth the zoning ordinance.

The City's principal means of controlling land use is the zoning ordinance, which divides the City into different districts. The individual districts determine lot size, building height, building and parking setbacks, required parking and various other standards. The Board of Adjustment may grant a variance from these requirements, when the applicant can demonstrate that strict adherence to the zoning code would cause an undue hardship because of conditions or circumstances unique to the individual property.

(2) To hear and decide appeals from any order, requirement, decision, determination or interpretation made by the zoning administrator, planning director or other official in the administration or the enforcement of the zoning ordinance.

The Zoning Administrator is charged with interpreting and administering the zoning ordinance. The Board of Adjustment hears and determines appeals from any order, requirement, decision, determination or interpretation made by the zoning administrator, director of regulatory services, planning director or other official in the administration or the enforcement of this zoning ordinance.

(3) To hear and decide applications for certificates of nonconforming use pursuant to the procedures and standards set forth the zoning ordinance.

Zoning districts determine where uses are permitted in the City. When the City changes the zoning district of an area, some uses may no longer be permitted under the new zoning district. However, if they were legally established before the change, then in general they can continue to exist as long as they are not abandoned or destroyed. They become legal nonconforming uses. The Board of Adjustment may determine if a property has nonconforming rights and the extent of these rights by approving a nonconforming use certificate to define these rights.

2010 Land Use Applications

<i>Total number of agenda items acted upon:</i>	
Variances:	90
Nonconforming use certificates:	3
Appeals of the decision of the zoning administrator:	3
Withdrawn applications:	6

<i>Agenda items per public hearing:</i>			
January 20:	7	August 11:	15
February 3:	1	August 25:	5
February 24:	3	September 1:	7
March 3:	3	September 15:	5
April 7:	2	October 6:	8
April 21:	1	October 27:	9
June 9:	5	November 17:	9
June 30:	4	December 1:	8
July 14:	3	December 15:	7

<i>Number of items acted upon by Community:</i>			
Near North	5	Southwest	16
Northeast	7	Powderhorn	7
Central	3	Nokomis	4
University	3	Longfellow	19
Calhoun-Isles	38		

Number of items acted upon by Ward:			
1 st	2	8 th	4
2 nd	2	9 th	4
3 rd	7	10 th	9
4 th	0	11 th	3
5 th	4	12 th	16
6 th	4	13 th	21
7 th	26		

Applications acted upon (all types) where Planning Department staff recommended:	
Approval	72.5%
Denial	21.5%
Withdrawn	6%

Applications acted upon (all types) where the Board of Adjustment:	
Granted entire request	82%
Denied	12%
Withdrawn	6%

Variance applications where the Board of Adjustment:	
Granted	88%
Denied	10%
Withdrawn	2%

Nonconforming use certificates where the Board of Adjustment:	
Granted	50%
Denied	25%
Withdrawn	25%

Appeals of the Zoning Administrator's Decision where the Board of Adjustment:	
Granted	0%
Denied	60%
Withdrawn	40%

Of the applications that were approved, the Board of Adjustment:	
With conditions	61%
Without conditions	39%

Variance requests and board approvals, by type:¹²

525.520(1). To vary the yard requirements, including permitting obstructions into required yards	
Requested:	50 applications
Approved	92%
525.520(2). To vary the lot area or width requirements...	
Requested:	3 applications
Approved	100%
525.520(3). To vary the gross floor area, floor area ratio and seating requirements of a structure or use	
Requested:	1 application
Approved	100%
525.520(5). To permit an increase in the maximum height of a fence	
Requested:	3 applications
Approved	66%
525.520(6). To reduce the applicable off-street parking or loading requirements by up to one hundred (100) percent	
Requested:	3 applications
Approved	100%
525.520(8). To permit parking that cannot comply with the location requirements for on-site parking...	
Requested:	7 applications
Approved	57%
525.520(12). To reduce the minimum width of a single-family dwelling...	
Requested:	1 application
Approved	100%
525.520(14). To reduce the minimum width of a driveway...	
Requested:	1 application
Approved	100%
525.520(17). To permit development in the SH Overlay District on a steep slope or bluff or within 40 ft. of the top of a steep slope or bluff...	
Requested:	14 applications
Approved	100%
525.520(21). To vary the number, type, height, area or location of allowed signs...	
Requested:	7 applications
Approved	100% (4 applications withdrawn)

¹ Approvals, in this section, refer to requests that were granted entirely or partially.

² There were no applications for the variances that are authorized by the zoning code but are not shown below.

525.520(22). To vary the Specific Development Standards in Chapter 536	
Requested:	2 applications
Approved	100%
525.520(26). To vary the enclosed building requirements	
Requested:	1 application
Approved	100%

On June 24, 2010, the State of Minnesota Supreme Court released its opinion in the case *Krummenacher vs. City of Minnetonka* that fundamentally altered the “undue hardship” showing required to grant a variance. Undue hardship is a legal standard set forth in law that cities must apply when considering applications.

On May 5, 2011, the Governor Mark Dayton signed into law a bill that amends state law regarding municipal variance authority. The bill amends Minn. Stat. §394.27, sub. 7 and §462.357 subd. 6 to state:

*§394.27 Subd. 7. **Variances; practical difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the 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 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 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 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 section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is*

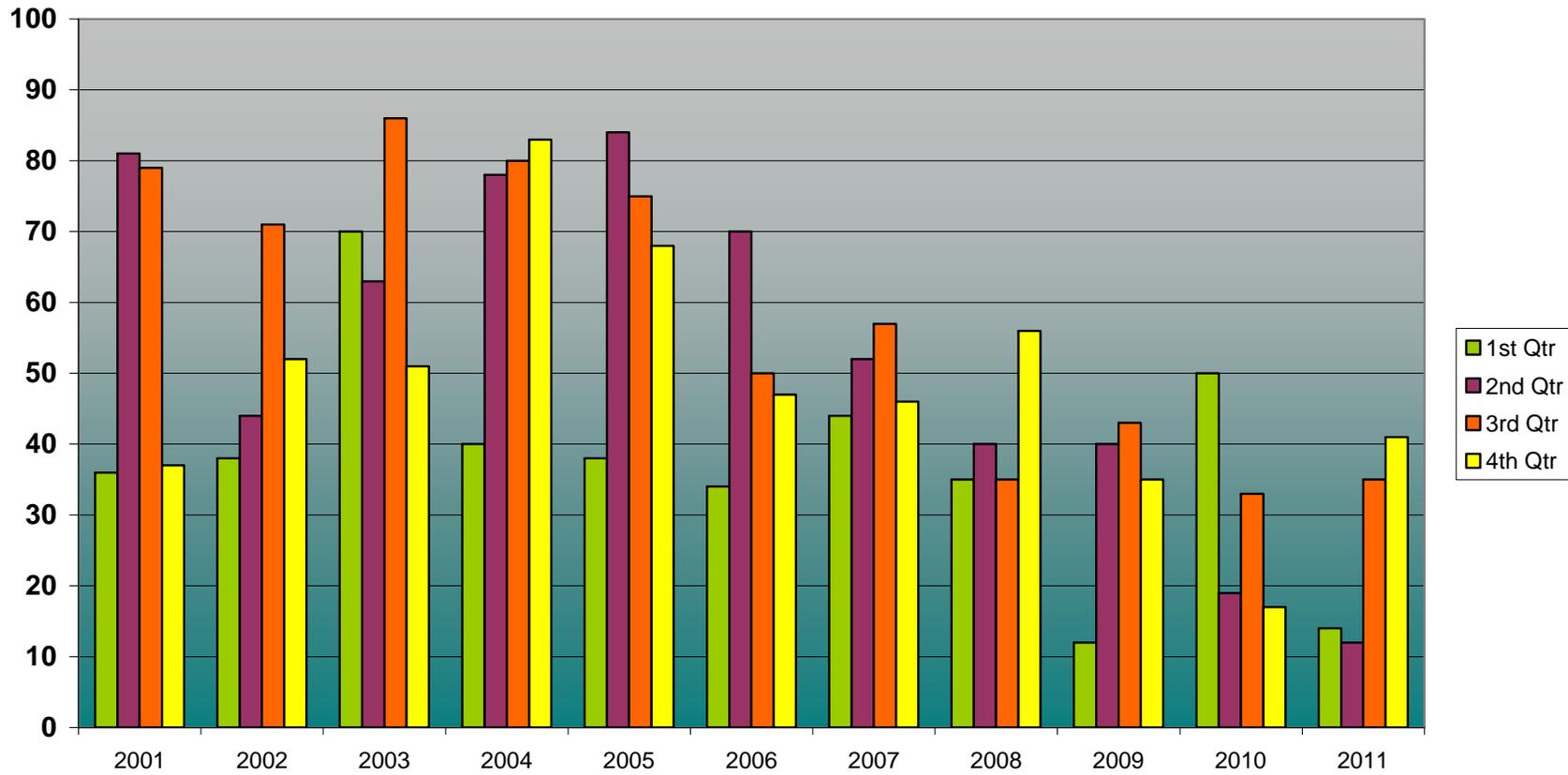
located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

An ordinance amendment was introduced at the City Council on May 13, 2011, to amend Chapters of the Zoning Code relating to revise the definition and required findings for variances to align with a recent change to state law. The adopted findings for variances of the zoning code, effective August 1, 2010 are as follows:

- (1) Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.
- (2) The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.
- (3) The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

The land use applications acted upon by the Board of Adjustment in between July 2010 and July 2011 represent a 51 percent decrease compared to the 162 application items acted upon during the same range the year prior. Variance applications acted on by the Board of Adjustment since August 1, 2011, after the legislative amendment, have more than doubled from 34 applications to 71 applications compared to the year prior.

BOA Actions by Quarter 2001 - 2011



Board of Adjustment - 2011 Land Use Applications

