

**CITY OF GEM LAKE, RAMSEY COUNTY, MINNESOTA**

**ORDINANCE NO. 123**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF GEM LAKE RELATING TO THE CONSIDERATION AND ALLOWANCE OF VARIANCES FROM THE ZONING ORDINANCE.**

**THE CITY COUNCIL OF THE CITY OF GEM LAKE ORDAINS:**

**SECTION 1. AMENDMENT.** Section 3.2 of Ordinance 43K is amended, to delete the definitions of “Hardship, Undue” and “Variance”.

**SECTION 2. AMENDMENT.** Section 17.4 of Ordinance 43K is amended as follows (deleted text ~~struck through~~, new text underlined):

Section 17.4 Variances

17.4.1 Purpose and Intent. The City Council, sitting as the Board of Appeal and Adjustment, may grant Variances from the strict applications of the provisions of this Zoning Ordinance and impose conditions and safeguards in the Variances so granted. These Variances shall be considered in cases where by reason of narrowness, shallowness, or shape of a lot or where by reason of exceptional topographic or water conditions or where other extraordinary and exceptional conditions of such lot exist, the strict application of the terms of the Zoning Ordinance would result in practical difficulties ~~an undue hardship~~ upon the owner of such lot in ~~developing or using such lot in a manner customary and legally permissible within complying with the regulations of the zoning district in which said lot is located.~~ “Practical difficulties,” as used in connection with the grant of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; 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 ~~shall do not constitute undue hardship for which a Variance will be considered or issued if a reasonable use for the real property exists under the terms of the Zoning Ordinance~~ practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. A variance may not be granted to allow any use that is not allowed in the zoning district in which the property is located.

17.4.2 Application. An application for any Variance from the Zoning Ordinance shall be made on a form provided by the City. If the Variance is to be considered in association with any other Building Permits, Conditional or Interim Use Permits, or Subdivision, all related applications shall be submitted simultaneously with the Variance application so as to represent the full intent of the applicant. The application(s) shall be accompanied by a fee payable to the City in an aggregate amount as established in the City’s fee schedule. The application(s) shall state full all facts relied upon by the applicant and shall be supplemented

by such maps, plans, or additional data for consideration of the Variance as required and communicated by the Zoning Administrator.

A) An application will be considered complete on the date the application(s), fee(s), and all supplemental materials requested have been received by the Zoning Administrator. As required by law, the City shall act on the application within the period prescribed unless said required period is extended or waived.

B) When reviewing variance applications, impact on the following criteria shall be reviewed and measured by the Planning Commission and City Council:

- 1) Adjacent Uses; and
- 2) Air and Water Quality; and
- 3) Traffic Generations; and
- 4) Public Safety and Health; and
- 5) Area Aesthetics; and
- 6) Economic Impact On The Entire Area; and
- 7) Consistency With The Comprehensive ~~Municipal~~ Plan.

17.4.3 Referral to Planning Commission. The matter along with all related information shall be referred to the Planning Commission which shall review the application(s) and hear the applicant or representative thereof at its first regular meeting following receipt of complete application(s). To insure preservation of health, safety, and general welfare of the public, the Planning Commission shall have authority to request additional information from the applicant concerning the Variance or to retain expert testimony with the consent and at the expense of the applicant concerning the application.

17.4.4 Public Hearing. In consideration of the application(s), a public hearing shall be held before the Planning Commission or the City Council to receive public comment on the matter. Notice of the public hearing shall be published in the City's official legal publication not less than ten (10) nor more than thirty (30) days with said notice stating the date, time, place and a summary of the application.

17.4.5 Referral to City Council. The Planning Commission shall make written findings of fact ~~in accordance with Section 12.1.5 B. of the Comprehensive Municipal Plan~~ and recommendation to the City Council which shall include such actions or conditions relating to the request as may be deemed necessary to carry out the intent and purpose of this Ordinance and the Comprehensive ~~Municipal~~ Plan.

17.4.6 Action by City Council. Upon receipt of the written recommendation of the Planning Commission and public comment, the matter shall be placed on the agenda for a regular meeting of the City Council, the date of such meeting to be not more than the number of days allowed by law after the date of receipt of a completed application unless such date is extended or waived. If no recommendation is transmitted to the City Council by the Planning Commission within thirty (30) days of its receipt, the City Council may take action without further communication from the Planning Commission. The City Council shall, in the form of a resolution, make a written finding of fact, convey its decision to approve or deny the application, ~~and impose such conditions on approvals as may be necessary to protect the public health, safety, and welfare.~~ The Council may impose conditions on the grant of a variance, provided that any condition imposed is directly related to a likely impact of the variance, and in rough proportionality to the scope of said impact. Approvals shall require a majority vote of the City Council.

17.4.7 Issuance of Variance. Following a decision by the City Council to approve or deny the application, the Zoning Administrator shall promptly notify the applicant in writing of the decision of the City Council, said notice considered delivered upon deposit for delivery with the US mail.

17.4.8 Lapse of Variance. Any Variance issued shall lapse if not acted upon within one (1) year of the date of issuance.

**SECTION 3. Severability.** Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid in any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or of any part hereof, other than the part held to be invalid.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Robert Uzpen – Mayor

\_\_\_\_\_  
William Short - Clerk

Summary of Ordinance 123 approved by City Council and published in the White Bear Press on \_\_\_\_\_, 2011.