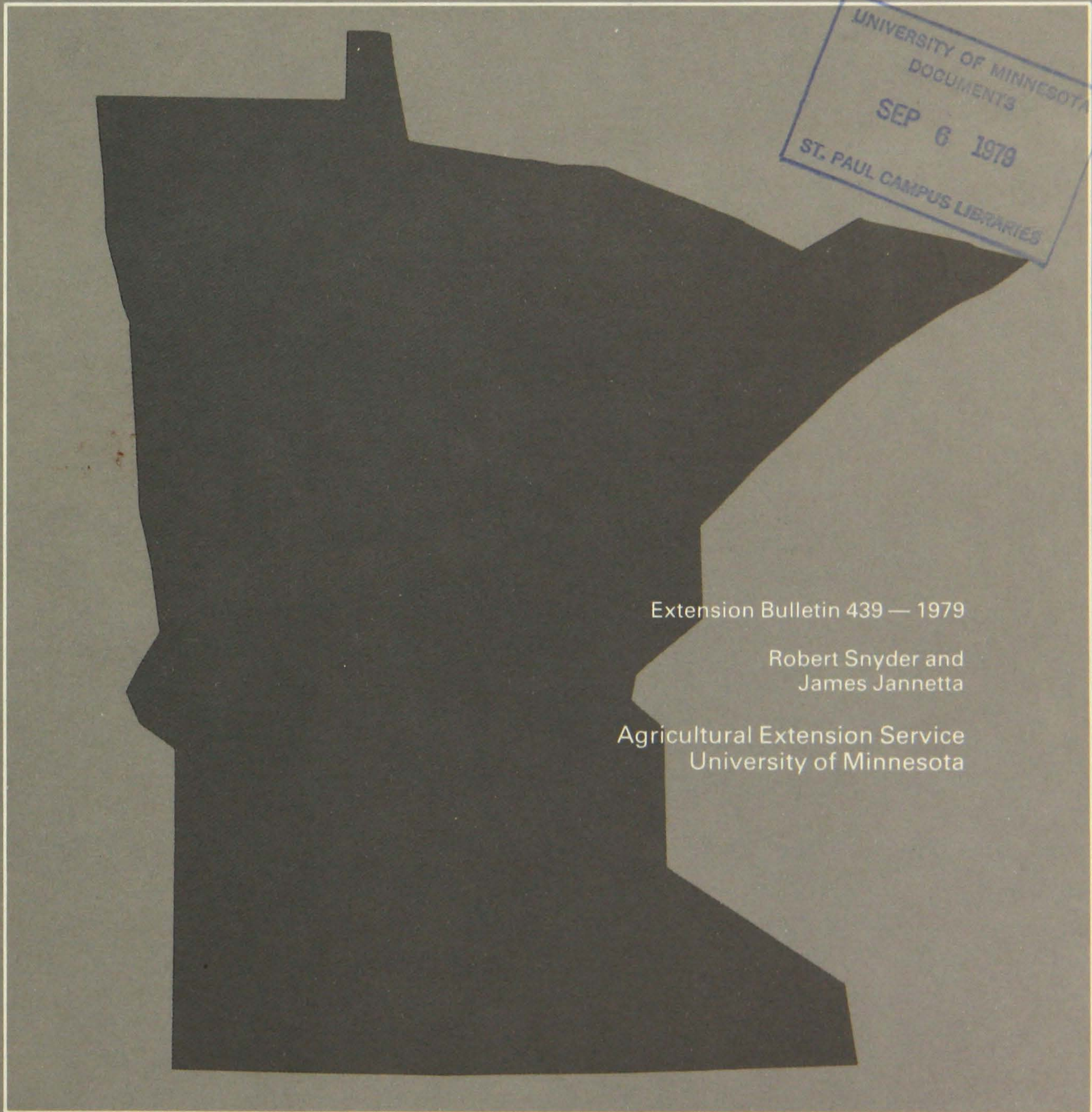
MN2000
EB 439 c2

County Zoning Variance Administration in Minnesota: A Study of Diversity



UNIVERSITY OF MINNESOTA
DOCUMENTS
SEP 6 1979
ST. PAUL CAMPUS LIBRARIES

Extension Bulletin 439 — 1979

Robert Snyder and
James Jannetta

Agricultural Extension Service
University of Minnesota

This archival publication may not reflect current scientific knowledge or recommendations.
Current information available from University of Minnesota Extension: http://www.extension.umn.edu.

Contents **Page**

Introduction 3
Ordinances Used for This Study 4
Variances Provisions in General 4
Types of Variances 4
Granting Body 5
Hearing Requirements 6
Notice of Hearing 7
Decisional Standards and Criteria 8
Special Restrictions 10
Time Limits on Administrative Steps 11
Intra-County Appeal 12
Summary 12

County Zoning Variance Administration in Minnesota: A Study of Diversity

ROBERT SNYDER AND JAMES JANNETTA*

Introduction

Zoning ordinances need to be tailored to fit the circumstances prevailing in the territory for which they are adopted. They would, however, be too complex and confusing to be truly useful for managing community growth if they covered, in text or map, every existing or imaginable situation. There will always be specific parcels of land that do not fit the mold of the comprehensive land use planning model, with a consequent need to accommodate such ownerships with appropriate adjustments. The goal is fair treatment for a landowner, yet the fullest possible protection for public interests and community residents.

These variations and adjustments could be court ordered, since a strict application of the ordinance might amount to an unconstitutional "taking" of property without compensation, a violation of equal protection, or a deprivation of some other constitutionally protected right. But relief through courtroom litigation would be time consuming and costly to all concerned parties and put an undue burden on the legal system.

Recognizing both the need and the difficulty, zoning law experts devised an alternative procedure, not involving the courts, except for appeals, but allowing flexibility through the extra-judicial granting of "variances." A zoning variance may be defined as legal permission to depart from one or more specific zoning ordinance restrictions when strict application would cause unnecessary hardship or practical difficulties.

Variances are authorized by state enabling legislation and local ordinance. Granting authority is vested in a discretionary board or agency within the local government structure. The variance granting function is "quasi-judicial," meaning a judicial act performed by a nonjudicial body.[1]

There are at least two reasons why the variance granting process should be of concern to local citizens and officials. One rests on the proposition, advanced by many, that excessive and unwarranted variances obstruct the realization of land use goals sought after through the regulatory process. If one assumes, perhaps heroically, that these goals are worthwhile, reflect local citizen consensus, and underlie standards and restrictions in the ordinance, this is a serious matter. If, on the other hand, the ordinance is poorly drafted, variances may be necessary to bring the application of a misguided ordinance within the norms of the community. Then, a better solution would be to adopt a new ordinance.

The second reason for concern is the potential for abuse of the regulatory power. This is because variance granting is a discretionary act that considers the request of each applicant individually. Abuse of power is clearly illustrated when relief is denied though a true hardship exists. But unfair and inequitable treatment may result as much from an unwarranted granting of variances as from an unjust withholding. This further abuse of discretionary authority may become a problem even where an ideal ordinance actually reflects the needs and desires of the citizenry.

Understanding variances is easier against the background of overall zoning administration. If the ordinance is well drafted, most applications for permission to pursue regulated activity can be processed by the zoning administrator with little or no exercise of discretion. If the plans of the applicant conform to the ordinance specifications, (an example would be building a house) the necessary permit[2] will be issued automatically. In this procedure, there is little chance for inequitable treatment of an applicant.

If flexibility is needed, there are three means for achieving it: variances, conditional use permits, and ordinance amendment. All involve the exercise of discretionary power and provide chances for inequitable treatment, but each serves a different purpose.

Conditional use permits regulate land use and development activities having nuisance characteristics or other features that make individualized attention necessary. They should be carefully distinguished from variances. Each conditional use is

*Robert Snyder is extension land economist, Agricultural Extension Service and associate professor, Department of Agricultural and Applied Economics, University of Minnesota; James Jannetta is a former research assistant, Department of Agricultural and Applied Economics.

All footnotes appear at the end of this publication.

listed as such in the ordinance, along with specific standards and criteria that must be satisfied before a permit may be granted. Discretion is necessary only because some standards and criteria are stated in qualitative terms. It should carefully be noted that since each conditional use is specifically provided for in the ordinance, a conditional use permit authorizes land use and development activity in full compliance with zoning regulations. A variance, conversely, involves permission for activity forbidden by the ordinance.

Another distinguishing feature is scope of applicability. Conditional use permit procedures encompass only those activities listed in the ordinance as conditional uses, perhaps in only one zoning district. In contrast, a variance may relate to any restriction or standard for any land use and development activity in any zoning district.

It also helps to remember that conditional use permits are issued by the planning commission or county board, while variances are granted by the board of adjustment.

The third way of providing flexibility in the zoning regulatory process, amending the text or zoning district map of the ordinance, may be accomplished only by the county board. Ordinance amendment offers almost unlimited possibilities for making adjustments. It can be improperly used when revising zoning district boundaries to change zoning restrictions on single properties, commonly called reclassification or rezoning. Courts refer to this as "spot zoning," and question its legality if it can be shown that it has accommodated a particular property owner in disregard of community interests. Spot zoning or rezoning may resemble a variance superficially, but the fact that rezoning does not require a finding of hardship and can be done only by the county board makes it distinct. Confusion may result, however, if both variances and rezoning are used improperly.

Ordinances Used for This Study

Data in the rest of this report are based on a study of all county-level ordinances containing comprehensive zoning provision and in effect as of March 1, 1973. Eighty of Minnesota's 87 counties, or about 92 percent, had adopted one or more such ordinances; the total number of ordinances was 104.

Two types of county-level ordinances were included in this study. First, "true" zoning ordinances, generally containing only those regulatory provisions customarily associated with zoning[3], and applying countywide to all privately owned lands outside incorporated cities.[4] Second, shoreland management ordinances (sometimes incorrectly called shoreland or shoreline "zoning" ordinances), containing, besides zoning restrictions, sanitary code and subdivision control provisions, and usually applied only to unincorporated areas within 1,000 feet of lakes, within 300 feet of streams, and in designated flood plains.[5]

In this publication, the terms "county zoning ordinances," "zoning ordinances," "county-level ordinances," and similar terms include both countywide zoning ordinances and shoreland management ordinances.

Sixty countywide zoning ordinances and 44 shoreland management ordinances were included in this study. In 36 counties, or 41 percent, only a countywide zoning ordinance had been adopted; in 20, or 23 percent, only a shoreland management ordinance; and in 24 counties, or 28 percent, both types of zoning ordinances were in effect on the date of this study. Seven counties had no zoning controls. Figure 1 shows the number and type of zoning ordinances in effect in individual counties.

The ordinances themselves constitute the basis for nearly all of the remainder of this report. No investigation was made as to how the ordinance provisions were actually applied or to any minutes or records of proceedings or to other official acts by resolution, ordinance, or otherwise by the county governing body or other boards or commissions. Additional detail and insight could have been acquired by consulting these sources, but their omission is unlikely to have seriously distorted the general picture.

Variance Provisions in General

The state enabling law for county land use planning and zoning in effect on the study date, March 1, 1973, made no reference to zoning variances and mandated no particular procedures for issuance.[6] Counties were free to establish procedures and criteria deemed appropriate, including the omission of variance provisions altogether.

Some guidance had been supplied by administrative rules of the Department of Natural Resources (DNR) containing standards and criteria to be employed in governing land use and development activity in shoreland areas.[7] Like the county planning act, the DNR rules were permissive and not mandatory. They did, however, assume the existence of authority as an implied power granted by the enabling legislation. The same interpretation of the statutes by the counties themselves is apparent from the fact that 101 of 104 ordinances studied included variance provisions.[8] The three exceptions, all countywide ordinances, were either temporary (interim) or outdated. In all three cases, the counties had also adopted a shoreland management ordinance which did provide for variances.

The variance provisions in the 101 ordinances studied supplied information about the types of variances authorized; the assignment of the granting power; procedural requirements for hearing and notice, review, and appeals; the criteria to be used by the granting authority; the imposition of special restrictions accompanying issuance; and time constraints on the decision-making process. These topical areas are taken up in the remainder of this report.

Types of Variances

Variances can be of two basic types: "nonuse" or dimensional variances and "use" variances. The distinction is a significant one since, usually, the granting of "use" variances is of much greater consequence to other property owners and nearby residents and may create higher obstacles to realizing a comprehensive land use plan. To allow, for example, either an industrial use in a residential zoning district or a residential use in an industrial zoning district usually makes the surrounding territory less desirable for the intended planned use. Yet, a broad departure from a side yard or rear yard standard, allowed by granting a nonuse variance, may have only limited consequences. The policies and practices of the courts in reviewing grants or denials of variances, of many state legislatures in adopting enabling legislation, and of local governments in exercising regulatory authority, all recognize the seriousness of the distinction between the two types of variances.[9]

Minnesota counties responded in various ways to the freedom to allow both use and nonuse variances. Nonuse variance provisions were universal among studied counties. In addition, in 55 counties, use variances were apparently permitted in at least one ordinance since the general language regarding variances makes no mention of them.[10] Use variances were much more likely to be provided for in shoreland ordinances (93 per-

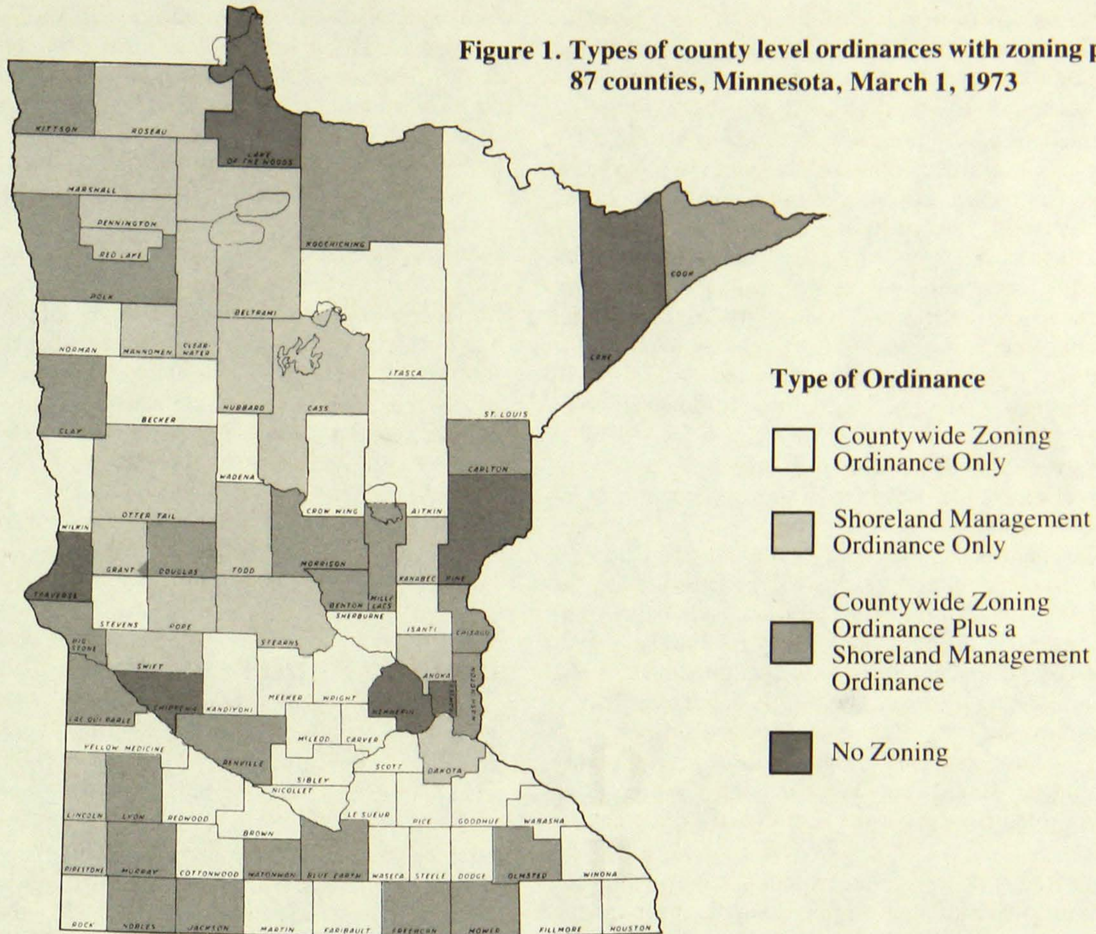


Figure 1. Types of county level ordinances with zoning provisions, 87 counties, Minnesota, March 1, 1973

cent) than in countywide zoning ordinances (35 percent). Accordingly, in the 36 counties with at least one ordinance prohibiting use variances, most such ordinances imposed countywide zoning.

Because of the wide discrepancy between countywide zoning ordinances and shoreland management ordinances, an anomalous situation existed in many of the 21 counties having ordinances of both types. In 11 counties, the shoreland ordinance allowed use variances, while the countywide zoning ordinance prohibited them.[11]

Table 1 shows the frequency of use variance provisions in county-level ordinances.

Table 1. Status of authority to grant "use" variances: 104 zoning ordinances, 87 counties, Minnesota, March 1, 1973

Status	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
No ordinance with zoning controls	7 (8)	None	None	None
Zoning ordinance lacking variance provision	3 (3)	3 (5)	None	3 (3)
"Use" variance prohibited	36 (41)	36 (60)	3 (7)	39 (38)
"Use" variances allowed	55 (63)	21 (35)	41 (93)	62 (60)
TOTAL*	87 (100)	60 (100)	44 (100)	104 (100)

*Totals adjusted for counties with more than one zoning ordinance.

Granting Body

In 1973 and earlier, there were three bodies which might alternatively have been given authority under county level zoning ordinances to order or deny the issuance of variances. The most likely candidate was a 3-person citizen board called the board of adjustment. Boards of adjustment were required to be appointed by the county board to hear appeals of decisions of the county zoning administrator.[12] To avoid politics as much as possible, no elected official or employee of the county board could be appointed to the board of adjustment.[13]

When the responsibility for responding to requests for variances is assigned to the board of adjustment, this means recognition of the separation of powers doctrine and the need for checks and balances in the governmental process. Avoiding direct political pressures makes the board of adjustment more like courts of competent legal jurisdiction and encourages objectivity in deliberations and decisions.

But there are also potential disadvantages to this arrangement. Avoiding any political connections may also mean less responsibility to the voters and less regard for the collective goals of the community.[14] This can be protected against, but probably not wholly controlled, by listing in the ordinance the specific grounds for granting variances and requiring written records of findings and reasons supporting each variance decision. Then, too, board of adjustment members may not fully appreciate the purposes and values of land use planning, as compared with, for example, the planning commission.[15] The principal function of the board of adjustment, however, is to recognize and correct inequities caused by peculiar circumstances and

grant variances only if justified. This is similar to its appellate role when asked to review decisions by the zoning administrator. A lack of orientation toward planning may not always be a serious hindrance to successful performance.

In 85 percent of the counties with zoning ordinances, variance granting authority was assigned to the board of adjustment in at least one ordinance. Looking at ordinances, 83 percent provided for variances granted by a board of adjustment, with the proportion somewhat higher for shoreland ordinances (91 percent) than for countywide zoning ordinances (77 percent), probably because DNR rules specified that variances under shoreland management ordinances were to be granted by the board of adjustment.[16] In one county the board of adjustment had authority to act only after receiving the recommendation of the relevant town board.

Another group sometimes given the authority to issue variances was the elected 5-member board of county commissioners. This arrangement insures responsibility to voters and reduces the chances that the county's official efforts toward improvement through zoning restraints will be frustrated by the unjustified granting of variances. The other side of this approach, aside from its questionable legality in shoreland ordinances, is the danger that political considerations will intrude into the decisionmaking process. The county board may also be unduly reluctant to vary regulations that it has itself adopted. Another negative factor is the increased workload on the county board that could be shifted elsewhere, leaving the legislative body with additional time for more significant policymaking tasks.

On the positive side, however, experience with variances may be of educational value and supply insights useful to the legislative function. Finally, the distinction between amendatory rezoning, which may be done in the complete absence of hardship or injustice, but only by the county board; and variances, which are properly granted only for hardship and inequity, becomes more difficult for both citizens and the decisionmakers to comprehend when they are products of the same body.

Only 12 ordinances in 12 counties designated the county board as the variance granting authority. All were countywide zoning ordinances, comprising 21 percent of such controls. In all but two instances, the county board acts only after receiving the recommendation of the planning commission. This helps to ensure adequate consideration of planning policies and to reduce the possibility of politically motivated decisions, but also results in delay for the applicant and a diluted sense of responsibility by the members of the decisionmaking body.

A third alternative was to vest variance granting authority in the county planning commission: a body of 5 to 11 appointed voting members plus designated county officials and employees serving in an ex-officio capacity.[17] Its primary initial function is to formulate (assisted by a professional planning consultant or resident planner) a comprehensive land use plan and regulatory ordinances as recommendations for adoption by the county board. Once ordinances have been adopted, the commission continues to assess planning policies, considers proposed amendments to ordinances in effect, and acts on applications for conditionally permitted land use and development activity (conditional uses).

Assigning responsibility for variances to the planning commission would seem to assure adequate weight for planning policy considerations and little concern for politics.[18] But attention to variance requests would tend to divert the planning commission from its statutory role as an advisory body to the county board. Also, since the planning commission has an important part in ordinance amendment decisions and may be the final authority for conditional use permits, both of which involve quite different considerations than do variances, incorrect decisions may result. Then, too, multiple functions of boards may confuse citizens and give fewer people a chance to understand and participate in the planning-regulatory process.

The fact that only five counties chose this option may reflect recognition of these disadvantages. Of the five ordinances, it is surprising that four are shoreland management ordinances, contrary to express DNR regulation.[19]

Some of the 21 counties that have adopted both a shoreland ordinance and a countywide zoning ordinance have placed the variance granting authority in two different bodies. This inconsistency, which would seem to be rather confusing to the interested and concerned citizen, was found in five counties.[20]

Figure 2 shows the relative frequency of assignment of variance granting authority by Minnesota counties and county-level zoning ordinances.

Hearing Requirements

A hearing before the decisionmaking body provides the applicant for a variance with an opportunity to present facts and arguments supporting this request, to answer questions, and to react to objections that might be raised.

Just about half of the ordinances in this study contained a variance hearing requirement, usually with notice to the public and other interested parties. Most of these were countywide zoning ordinances, comprising about 75 percent of such ordinances. In contrast, only about one out of six shoreland ordinances specifically required a hearing.

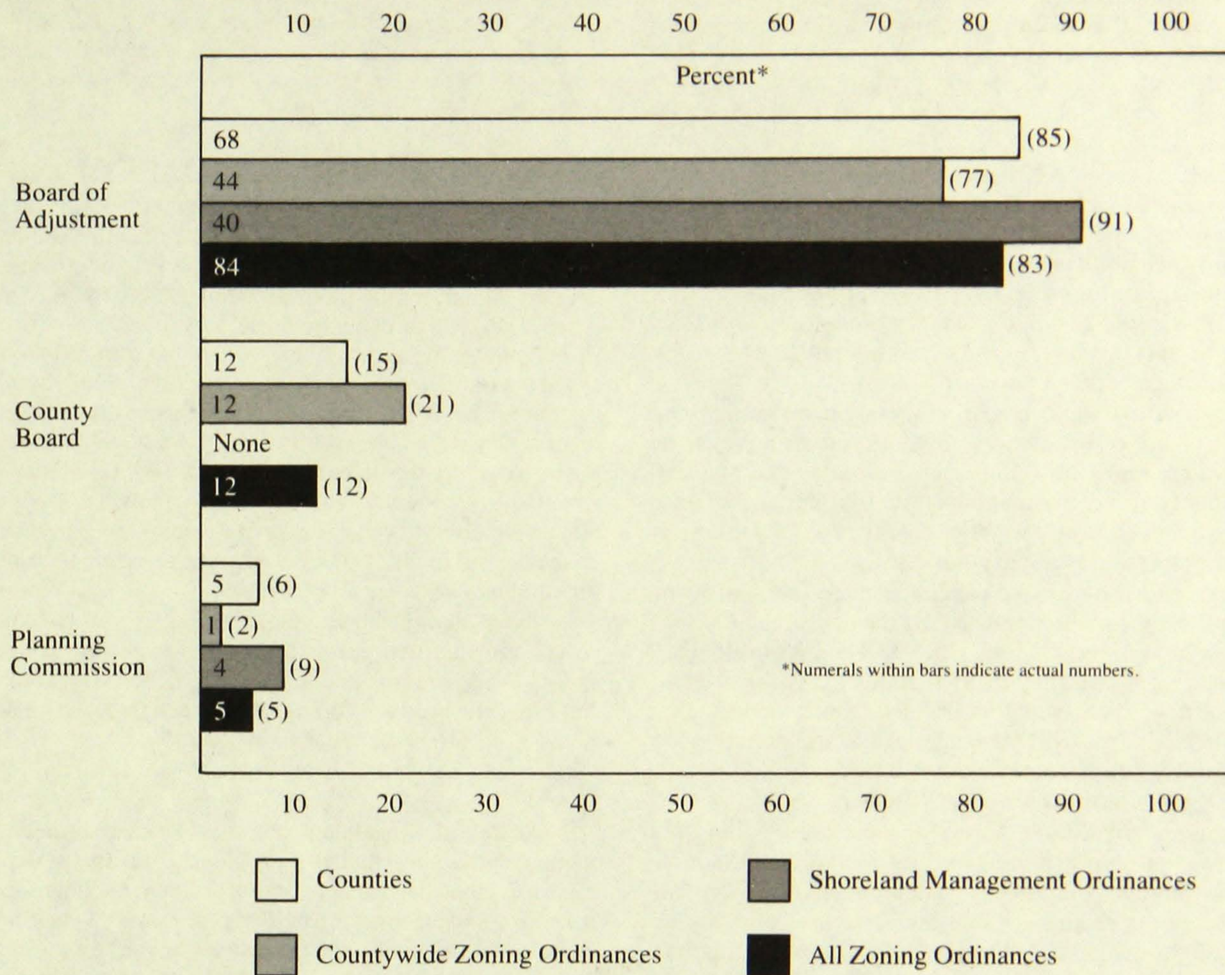
When the ordinance is silent on the public hearing matter, but delegates variance granting authority to the board of adjustment, statutory law might be interpreted to require a hearing with notice to the applicant.[21] Such an interpretation would not invalidate proceedings of the board of adjustment if the hearing and notice requirement were complied with, regardless of the absence of any reference to a hearing in the ordinance itself. Unfortunately, unless an applicant consulted an attorney, statutory rights to having a hearing might be violated without his knowledge.

In 34 counties, the situation just described appeared in at least one county-level zoning ordinance. It nearly always involved shoreland management ordinances, of which 75 percent established these rather indecisive circumstances. Only two countywide zoning ordinances were in this category.

The presence or absence of a hearing and notice requirement also is foggy in 17 ordinances, which neither make express demands nor assign variance responsibilities to the board of adjustment. It is now a question of whether the constitutional guarantee of procedural due process requires a hearing.[22] This may depend on whether or not the application is denied, since, if a hearing is constitutionally required, its intent is to protect the rights of the applicant to a variance if sufficient hardship exists.

Most in this category were countywide zoning ordinances and constituted 23 percent of such ordinances. Probably because DNR administrative rules required that variance decisions be made by the board of adjustment[23], thus activating statutory requirements, the right to a hearing was based on constitutional law in only four shoreland ordinances.

Figure 2. Assignment of responsibility for granting variances, 101 ordinances, 80 counties, Minnesota, March 1, 1973



Since, for nearly all county zoning ordinances the hearing requirement was found in the ordinances (or the U.S. Constitution), and in 75 percent of the shoreland ordinances it was based on state statutes, inconsistencies could be expected in the 21 counties that have adopted both types of ordinances. This was true in 14, or two-thirds of such counties.[24]

Table 2 shows the frequency of the three different bases for ordinance hearing requirements in Minnesota counties and county-level zoning ordinances.

Table 2. Legal basis for hearing requirement on variance requests, 101 ordinances, 80 counties, Minnesota, March 1, 1973

Legal basis for hearing requirement	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
County ordinance	45 (56)	42 (74)	7 (16)	49 (49)
County planning enabling legislation	34 (43)	2 (4)	33 (75)	35 (35)
U.S. Const. amend. XIV, (due process clause)	15 (19)	13 (23)	4 (9)	17 (17)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

Notice of Hearing

Hearings with notice only to the person requesting a zoning variance serve a useful purpose and may confirm the jurisdiction of the decisionmaking body. Broader notice will present opportunities for neighboring landowners and other interested persons or organizations to speak to the question. Such notice also helps to assure that variances are neither withheld nor granted haphazardly.

It is not a glowing commentary on zoning practices in Minnesota to note that 61 percent of the studied ordinances required no hearing notice beyond the applicant. And that of 80 counties, 58 had adopted at least one ordinance that did not dictate the extended notice. Often, the lack can be attributed to the absence of a hearing requirement of any kind in the ordinance and the language of the county planning act limiting mandatory notice to the applicant. But even among the 49 ordinances that required hearings, 20 percent did not expand notice beyond the applicant.[25] The broader notice mandates are virtually the exclusive province of countywide zoning ordinances, since a majority of the seven shoreland ordinances with hearing requirements did not impose this requirement.

The most common type of extended notice called only for notice to the public. This was found in 34 percent of all ordinances and in 31 counties, more than twice as often as the second most common type of extended notice. Publication in the

official newspaper of the county was the method used in 28 ordinances.[26] Ten ordinances, including five also referring to the official newspaper, called for publication in a "paper of general circulation." One ordinance contained a provision requiring that notices be posted on the property where the variance has been requested, in the county courthouse, and in one other public place.

Fifteen ordinances in 13 counties required notice to owners of nearby property. The stipulated distance was usually 300 feet, but one ordinance said 250 feet and in another, notice was required to be sent to the nearest 11 property owners or to those within a quarter mile, whichever involved the smaller (not larger) number of notices. Such flexibility makes the ordinance adaptable to varying population densities but places an increased burden on administrative officials.

Other types of extended hearing requirements were found in only a handful of ordinances. Five required notice to the township where the subject property was located and one provided for notice to nearby municipalities. In the latter, notice was also to be given to any watershed district or lake improvement district that filed an annual request.

Most extended-notice ordinances required that notices be sent or published a specified time before the date of the hearing. The most common period, found in 33 of the 39 ordinances requiring notice, was 10 days. Other stipulated periods varied from 1 week to 15 days, with four ordinances merely providing for "due notice," apparently leaving the specific period to the reasonable discretion of county administrators.

Table 3 gives information on the frequency of hearing notice requirements on zoning variance requests by Minnesota counties and county-level zoning ordinances.

Because notice requirements were found in over half of all countywide zoning ordinances, but few shoreland ordinances, the result might be a lack of uniformity in counties that had adopted both types of ordinances. Among 16 counties where both types of ordinances contained variance hearing requirements, there were nine counties where the notice mandates of one ordinance differed from those in the other.

Two considerations may soften any criticism of county practices which ignore public exposure of proceedings before acting on zoning variance requests: (1) at the time of this survey, the only expressed or implied legal requirement outside the ordinance itself demanded nothing more than a hearing for and

Table 3. Hearing notice requirements on variance requests in county level zoning ordinances, 101 ordinances, 80 counties, Minnesota, March 1, 1973

Party required to be notified	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
No hearing required	49 (61)	15 (26)	37 (84)	52 (52)
Applicant only	9 (11)	6 (11)	4 (9)	10 (10)
Public	31 (39)	31 (54)	3 (7)	34 (34)
Owners of nearby property	13 (16)	13 (23)	2 (5)	15 (15)
Township	5 (6)	5 (9)	0	5 (5)
Other	1 (1)	1 (2)	0	1 (1)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

notice to the applicant; (2) procedures actually in use at the time of the survey may not have been fully reflected in the ordinances. No investigation was made which would have discovered the existence of self-imposed requirements of the decisionmaking body or other sources of standard operating procedures in the counties studied.[27]

Decisional Standards and Criteria

When discretionary authority to grant or deny variances is vested in a non-elected body, the danger of abuse of authority is lessened by a legal requirement, imposed by the so-called "delegation" doctrine, that such decisional acts be guided and constrained by standards and criteria prescribed by the governing body.[28] When the authority is reserved to an elected body, such as the board of county commissioners, such standards and criteria, though not legally required, are highly advisable. Relatively broadly stated standards and criteria will usually be found by the courts to satisfy the delegation doctrine so long as they provide reasonable guidelines to the decisionmakers. More specific standards and criteria may allow less flexibility, but speed up the decisionmaking process and help to assure that applicants for variances are treated impartially.

The Minnesota county planning act prior to 1974 provided no statutory guidelines or directives for issuing zoning variances. Consequently, the appearance of decisional standards and criteria in county zoning ordinances in effect in 1973 resulted from discretionary acts by county boards, perhaps with some awareness of the legal doctrines of delegation and due process.

All counties that had adopted one or more ordinances with variance provisions had also provided decisional standards and criteria of some sort in at least one ordinance. Ninety-three percent of the ordinances of both types (countywide zoning and shoreland) contained such provisions; seven ordinances lacked such guidance measures. This may have been a small matter, legally, if, in these ordinances, granting authority were vested in a governing body subject to the voters. Yet this was true in only one of the seven ordinances. Practically speaking, even decisions by an elected body are more likely to be impartial if guided by standards and criteria established before the identity of the applicant is disclosed. It is curious that in four of these seven counties that had adopted one ordinance lacking standards and criteria, a second ordinance had been adopted that did contain them. This irregular situation, surely leading to confusion, is difficult to explain, especially since about 50 percent of the defective ordinances were in each of the two ordinance type categories.

In the study ordinances, standards and criteria to be used in making variance decisions fell into three rather loosely defined categories: (1) the effect on the public interest; (2) the effect on the neighborhood; and (3) the existence of hardship conditions regarding the subject property. Standards and criteria belonging to each category were found in over nine out of ten shoreland management ordinances. The same was true for countywide zoning ordinances, except that a smaller proportion, 61 percent, contained standards and criteria relating to the effect of the variance on neighboring property. Table 4 shows the frequency of standards and criteria of each type in Minnesota counties and county-level ordinances.

A more detailed presentation appears in tables 5, 6, and 7 and in appendix A. It is apparent that (1) rather general standards and criteria dominate, providing broad discretionary

powers to the variance-granting body; (2) the majority of the standards and criteria concern the lack of necessity for the regulatory measure for which relaxation is requested, rather than the presence of a genuine hardship in the use of the subject property (for example, no need for such a high setback standard); and (3) relatively few standards and criteria reflect concern for the effect of the variance on the development plan of the community, particularly so for countywide zoning ordinances.

The effect of a variance on the public was usually represented in both types of ordinances by the very general criterion "consideration of public health, safety, and welfare," a phrase providing minimal guidance to a decisionmaker. Assuming, as here, that both governmental plans and policies with respect to physical development and the zoning ordinance reflect the well-being of the public, two other standards in this category were often present. The first, "not contrary to area development or management policies or the comprehensive plan," was found in some form in nine out of ten shoreland ordinances, but only one of four countywide zoning ordinances. Contrarily, the standard "in keeping with the spirit and intent of the ordinance," though less common, appeared in 42 percent of the countywide ordinances, but seldom in shoreland ordinances. A few ordinances included negative standards aiming at specific effects on the public. For instance, the ordinance may require that the variance will not increase the danger of flooding or cause density standards to be exceeded (appendix table A-1).

The need for observation of the restriction for which relief is requested because of the effect of a variance on the interests of nearby landowners and the neighborhood is usually represented, if at all, by a general standard calling for "no interference with or damage to neighboring property." Although very

Table 4. Types of standards and criteria for granting variances, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
None	7 (9)	4 (7)	3 (7)	7 (7)
Effect on Public	77 (96)	52 (91)	41 (93)	93 (92)
Effect on neighboring property	65 (81)	35 (61)	40 (91)	75 (74)
Hardship	76 (95)	52 (91)	41 (93)	93 (92)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

Table 5. Variance standards and criteria relating to the effect on the public, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
Consideration of public health, safety, and welfare	74 (93)	49 (86)	41 (93)	90 (89)
Not contrary to area development or management policies or the comprehensive plan	49 (61)	14 (25)	38 (89)	53 (52)
In keeping with the spirit or intent of the ordinance	24 (30)	24 (42)	3 (7)	27 (27)
Other (see appendix table A-1)	7 (9)	7 (12)	0	7 (7)
None	8 (10)	5 (9)	3 (7)	8 (8)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

Table 6. Variance standards and criteria relating to effect on neighboring properties, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
No interference with or damage to neighboring property	60 (75)	30 (53)	40 (91)	70 (69)
No material adverse effect on health and safety of those living and working on adjacent property	23 (29)	23 (40)	0	23 (23)
Other (see appendix table A-2)	5 (6)	8 (14)	0	8 (8)
None	19 (24)	23 (39)	4 (9)	26 (26)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

Table 7. Variance standards and criteria relating to hardship, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
Unique conditions, not generally shared by neighboring property	75 (94)	52 (91)	41 (93)	93 (92)
Needed to secure a property right like that of nearby owners	42 (53)	7 (12)	40 (91)	47 (47)
Not granted merely because a majority of neighbors do not oppose	38 (48)	1 (2)	37 (84)	38 (38)
Needed to avoid hardship	26 (33)	25 (44)	2 (5)	27 (27)
Other (see appendix table A-3)	24 (30)	29 (51)	2 (5)	31 (31)
None	8 (10)	5 (9)	3 (7)	8 (8)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

common in shoreland ordinances, this standard was found in only 53 percent of the countywide ordinances. Standards that concern the health and safety of those living and working on adjacent property, found in four out of ten countywide zoning ordinances, were completely absent from shoreland ordinances. A few additional standards reflecting a concern for property values and the character or environment of the neighborhood were found only in a small number of countywide ordinances (appendix table A-2).

As indicated earlier, most ordinances of both types contain standards or criteria relating to the presence of a hardship in the use of the applicant's property. Interestingly, there appears to be much more concern with the uniqueness of the situation that is claimed to justify a variance than to any showing of actual hardship. The standard "needed to avoid hardship," was listed in some form in only 44 percent of the countywide zoning ordinances and 5 percent of the shoreland ordinances and was used by only a third of the counties studied.

The most frequent standard, found in most ordinances, was simply that unique conditions, not generally shared by neighboring property, were present. Shoreland ordinances usually also contained the requirement "needed to secure a property right like that of nearby owners," a negatively stated uniqueness standard. Also common in shoreland ordinances was the standard that the variance not be granted merely because a majority of the neighbors do not oppose, implying a unique hardship situation.

Other standards were occasionally employed, nearly always in countywide zoning ordinances (appendix table A-3). The more common were "needed to do substantial justice," "not just a convenience," and that the problem is not so general as to be better solved by "general regulation." Economic standards are almost entirely absent; only two ordinances require a finding that "the property will not yield a reasonable return if the regulation is complied with." Two ordinances stipulated that the special conditions that are the basis for the variance request must not have resulted from the action of the applicant. Several other standards appeared in only one countywide zoning ordinance.

Lack of uniformity between countywide zoning ordinances and shoreland management ordinances is once again evident. Aside from "consideration of public health, safety, and welfare" and the required findings of "unique conditions, not generally shared by neighboring property," nearly every standard or criterion was found in a sizable percentage of one type of ordinance, but seldom in the other. An explanation is suggested by the fact that several required findings frequently contained in shoreland ordinances are identical or similar to those in the model shoreland ordinance promulgated by DNR.[29] It is now apparent that these standards and criteria differed significantly from those already being used in countywide zoning ordinances. Although counties were not compelled to use the model ordinance standards and criteria in their shoreland ordinances, apparently only a minority chose not to. This posed no problem in the 20 counties that had not enacted countywide zoning regulations, but a lack of consistent standards and criteria in many of the 21 counties that had adopted variance standards and criteria in both types of ordinances must have created a difficult situation for both the public and the decisionmaking body. Under these circumstances it may be assumed that the proper use of the variance technique and the goal of impartial treatment for variance applicants will be harder to achieve. If this is true, it is a widespread problem, for in those 21 counties that had adopted ordinances of both types, dissimilar standards and criteria were found in 18 counties, usually with stricter requirements in shoreland ordinances.[30]

Special Restrictions

The interests of neighboring property owners, the public, and others may be safeguarded against the harmful effects of granting a variance by the imposition of special restrictions on the use and occupancy of the subject property. Though it is likely that authority to attach special restrictions or conditions to the variance is implied in conjunction with the power to grant zoning variances, less confusion and misunderstanding is likely if the ordinance clearly acknowledges the existence of such authority. This happened in 81 percent of both types of ordinances included in this study (table 8). The clauses authorizing special restrictions were general, not limiting significantly the nature of restrictions that can be attached, and seeming to bestow broad discretionary power to the variance-granting body. Although the language used in shoreland ordinances differs from that appearing in the countywide zoning ordinances, the lack of specificity in both should prevent any serious confusion. This will not necessarily be true however, where, in the same county, one ordinance authorizes special restrictions and another does not. This anomalous situation was present in seven of the 21 counties that had adopted variance provisions in both types of ordinances.

Generally, any attached condition or special restriction reasonably related to the purposes of the ordinance or the public health, safety, and welfare will be enforceable. One limitation should be mentioned. Since the variance attaches itself to a specific piece of real estate rather than to the owner, the special dispensation so conveyed passes to succeeding owners and any attempt to limit a variance to the period of present ownership is not likely to be enforceable. Although a similar result may be reached by making the variance temporary and subject to peri-

Table 8. Authorized special restrictions to be attached to variances, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Type of restriction authorized	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
None expressly authorized	18 (23)	10 (18)	9 (20)	19 (19)
Any consistent with purposes of ordinance and state and local law	33 (41)	1 (2)	32 (73)	33 (35)
Any that will secure the objectives of the varied regulation	24 (30)	24 (42)	0	24 (24)
Any (discretionary with the granting body)	14 (18)	14 (25)	0	14 (14)
Any needed to secure compliance and protect adjacent property	6 (8)	6 (11)	3 (7)	9 (9)
Other	3 (4)	2 (4)	1 (2)	3 (3)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

odic renewal, the legality of even this may be questionable. It also adds to the administrative burden of zoning ordinance enforcement.

Time Limits on Administrative Steps

Imposing time limits on the decisionmaking process can avoid delaying tactics which boost the costs to those seeking variances. Two types of limitations are possible: (1) those placing a maximum allowable time period on the total decisionmaking process, measured from the date of the application and terminating with the date the variance is granted or denied; and (2) those confining the time allowed for the completion of one or more procedural steps leading to such a grant or denial. With one exception, it was only the latter that were found in the ordinances studied.

Only half of the ordinances with variance provisions included time limits on the decisional process. Such limitations were present in 82 percent of the countywide zoning ordinances, but in only 9 percent of the shoreland ordinances, with the latter circumstance perhaps explained by the absence of such constraints in the model shoreland ordinance published by DNR.

Time limitations were placed on three procedural steps: (1) setting a hearing date; (2) making recommendations to a body with final decisionmaking authority; and (3) reaching a final decision to grant or deny the requested variance. The frequency of the appearance of these provisions in Minnesota counties and county-level ordinances is shown in table 9 and appendix table B-1.

Only 10 percent of the ordinances required that a hearing date be established within a certain period, most commonly 60 days, but varying from 1 week to 60 days after receipt of a variance application. In all instances, the step involved was the scheduling of the hearing date, not the hearing itself. None of the ordinances required a hearing within a specific time frame.

Of the 13 ordinances providing for a review and recommendation by a body other than the final decisionmakers, 12, all countywide zoning, limit the time allotted for completion of that function. In all but one, the reviewing body was the planning commission, the specified time period was 60 days after receipt of the application, and final decisional authority was vested in the county board.

Table 9. Time limitations on variance administration procedures, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Type of limitation	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
None	46 (58)	10 (18)	40 (91)	50 (50)
Setting hearing date	7 (9)	7 (12)	3 (7)	10 (10)
Making recommendations to deciding body	12 (15)	12 (21)	0	12 (12)
Application or hearing to final decision	31 (39)	31 (54)	1 (2)	32 (32)
Appealing final decision	6 (8)	6 (11)	1 (2)	7 (7)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

The third type of limitation, setting a time frame within which the final decision must be reached, is probably the most significant one from the perspective of a variance applicant. It was also much more common than any other limitation, occurring in one-third of all ordinances studied. All but one ordinance measured the time period from the date of the hearing, not the date of receiving the application. This does not establish a time limit for the entire administrative process. Seventy-five percent of the ordinances having this time period restriction required that the decision be reached within 15 days of the hearing, with most of the rest specifying a longer period, up to 45 days in two instances (appendix table B-1).

In half of the ordinances studied there were no specific limitations on the time which might be taken to accomplish any of the procedural steps involved in granting or denying a variance. The only limitation truly protecting an applicant from abuse of the power to delay action is one restricting the time for the total process. Among those 50 percent with time period restrictions on one or more actions in processing requests, but not on total time from application to final decision, the total allowed time period will be determined only when the ordinance requires that: (1) there be a hearing prior to a recommendation by a reviewing body; (2) the recommendation be made within a specific time after the application date; and (3) the final decision occur within a set time after the hearing date. This combination did not appear in any of the study ordinances; either no hearing was required or the hearing was held by the final decisionmaking body after a recommendation.

Even if the total time period after application is not limited, it may be useful for the applicant to know as soon as possible the final date for a decision. Considering the ordinance provisions found, there would be a time limitation on establishing such a date, although indirectly, only if an ordinance required that (1) the hearing date be set within a time frame based on the date of application, and (2) the final decision be made within a time frame based on the date of the hearing. This combination did not appear in any of the study ordinances.

It should be noted that even if such a combination were present, delays could result from continuation of hearings after the original date set. Once a hearing has been concluded, the date of a final decision is spelled out in one-third of the ordinances. In the other two-thirds, there is essentially nothing to prevent delaying a final decision indefinitely when it is useful to do so. The only alternative would be legal action based on a denial of property rights because of unreasonable delay. One ordinance mandates a final decision must be reached within 30 days of the application. Although this seems extreme, it provides a starting point for compromise.

As a final observation, in 13 of the 21 counties that had adopted both countywide zoning and shoreland ordinances, time limitations on processing applications in the two ordinances differed, usually because there were no limitations at all in shoreland ordinances.

Another time restriction appeared in a few ordinances — a limit on the number of days after a final decision for an appeal. Such a limitation, also tabulated in table 9, was used by only six counties, usually involved an appeal to a different entity within the county's governmental or administrative structure and, with one exception, always designated 10 or 15 days from the date of the final decision. All but one were contained in countywide zoning ordinances.[31]

Intra-County Appeal

Usually a decision by a variance granting body is final — subject to appeal to district court. However, a few counties chose to provide for a prior appeal within the county governmental structure. Such provisions appeared in eight countywide zoning ordinances and two shoreland ordinances. With one exception the appeal was from a decision of the board of adjustment and the appellate body was the board of county commissioners. The exception was an appeal of a planning commission decision to the board of adjustment. Despite the small number of ordinances involved, one county with ordinances of both types provided for intra-county appeal under one, but not both.[32]

Summary

Variances are flexibility devices which allow deviation from the standards imposed by a zoning ordinance when their strict enforcement would create undue hardship in the use of a property. They should be carefully distinguished from conditional use permits and rezoning. There are two kinds of variances: "use" variances and "nonuse" variances. Variances are to be granted only when unnecessary hardship is shown and criteria in the zoning ordinance are satisfied. The grant may be subject to the attachment of reasonable conditions or restrictions.

Each variance request is acted on separately, thus leading to *ad hoc* decisionmaking tailored to the facts and circumstances of each situation. Generally the granting body must hold a hearing and give adequate notice to all interested parties so they can present their facts and arguments. The decision must be made according to the standards and criteria in the ordinance, and the decisionmaking body must document its findings and give reasons for conclusions.

Almost all Minnesota county-level zoning ordinances in effect in March 1973 provided for some form of variance. A majority of counties authorized "use" variances, though this was far more commonly a feature of shoreland management ordinances than of countywide zoning ordinances. Most ordinances designated the board of adjustment as the administrative body, though a few designated the planning commission or the county board. Under more than 80 percent of the ordinances, a hearing was required by statute or ordinance, but less than half of the ordinances required that notice of the hearing be given to anyone other than the applicant, usually by publication.

All but a few ordinances contained decisional standards and criteria, usually representing three areas of concern: (1) the effect on the public; (2) the effect on neighboring property; and (3) the existence of a hardship situation. Four out of five ordinances provided for attachment of special restrictions when granting a variance.

Only half of the ordinances limited the time period for administrative steps involved with processing a variance request. In only one instance was there a limit on the total process from time of application to final decision. A few ordinances provided for an appeal of that decision within the county structure prior to appeal to the courts.

These generalities should not obscure the obvious: county zoning variance administration in 1973 was chaotic. Intercounty variation created unnecessary obstacles to effective communication across political boundaries and frustrated statewide efforts to educate local citizens involved in the planning-regulatory process. Inadequate public exposure invited subjectivity and results dictated by whim rather than careful analysis, aggravating the destructive potential of "use" variances operating at cross purposes to community planning goals. The lack of procedural uniformity in counties that had adopted both countywide zoning ordinances and shoreland management ordinances certainly intensified the confusion when two ordinances existed, regulating the same or similar elements in the land development process.

These conditions contributed to a growing belief that new statewide enabling legislation was badly needed and that ultimately led to a comprehensive 1974 amendment to the county planning act. As a result of that amendment, and minor subsequent adjustments, statewide uniformity in the procedural and substantive aspects of county zoning variance administration became mandatory in August 1978. A brief summary of the new statutory requirements, previously mentioned only in footnotes, follows.

Variances are defined as "any modification or variation of official controls" (including zoning) "where it is determined that, by reason of exceptional circumstances, the strict enforcement of the official controls would cause unnecessary hardship."[33] The granting of "use" variances is expressly prohibited.[34] "Nonuse" variances may be issued exclusively by order of the board of adjustment[35] and only after a public hearing preceded by public notice in a newspaper of general circulation in the area concerned and in the official newspaper of the county, at least 10 days before the hearing.[36] Written notice of the hearing must also be given to (1) the board(s) of supervisions of the township(s) containing the subject property, (2) the municipal council(s) of any municipality(ies) within 2 miles of the subject property, and (3) to property owners of record within 500 feet of the subject property in incorporated areas. If the area is unincorporated, written notice must be sent to all property owners of record within 500 feet of the subject property or the ten nearest properties, whichever would provide notice to the greatest number of owners.[37] The hearing may be conducted by the board of adjustment or a body or individual the county board designates.[38]

Variances may be granted only if there are "practical difficulties or particular hardship" in carrying out the strict letter of the ordinance and when the terms of the variance are consistent with the comprehensive plan.[39] "Hardship" is defined as meaning that the subject property cannot be put to a reasonable use if used under the conditions allowed by the ordinance; that the plight of the landowner is due to circumstances unique to the property that were not created by the landowner; and that the variance, if granted, will not change the essential character of the locality.[40] The statute also states that if a reasonable use for the property exists under the terms of the ordinance, economic conditions alone shall not constitute a hardship.[41] The county apparently may add appropriate additional requirements. Further, there is now express authority for the board of adjustment to impose special restrictions (conditions) in granting variances that will insure compliance and protect adjacent properties and the public interest.[42]

There are still no statutory limits on the time period for reaching a decision on a variance request, but a new provision states that appeals of such decisions by the board of adjustment may be made only to the relevant district court and must be made within 30 days after receipt of notice of the decision.[43] Standing to appeal is expressly given to any aggrieved person or persons, or any department, board or commission of the jurisdiction (meaning the county) or of the state.

Appendix A

Table A-1. Additional variance standards and criteria relating to the effect on the public, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties N=80*		Type of ordinance: Countywide zoning N=57		Shoreland management N=44	All N=101	
	Number (percent)						
The variance is the minimum possible	2	(3)	2	(4)	0	2	(2)
Encourages the most appropriate use of land	2	(3)	2	(4)	0	2	(2)
Will not result in a density of land use greater than that for the district	1	(1)	1	(2)	0	1	(1)
Will not congest public streets	1	(1)	1	(2)	0	1	(1)
Will not decrease flood protection	1	(1)	1	(2)	0	1	(1)

*N = total number of counties or ordinances.

Table A-2. Additional variance standards and criteria relating to the effect on the neighboring properties, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties N=80*		Type of ordinance: Countywide zoning N=57		Shoreland management N=44	All N=101	
	Number (percent)						
Will not change the character of the district or neighborhood	3	(4)	3	(6)	0	3	(3)
Will conserve property values	3	(4)	3	(6)	0	3	(3)
Will not impair neighbor's air and light	1	(1)	1	(2)	0	1	(1)
Will not increase danger of fire	1	(1)	1	(2)	0	1	(1)

*N = total number of counties or ordinances.

Table A-3. Additional variance standards and criteria relating to hardship, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Standard or criterion	Counties N=80*		Type of ordinance: Countywide zoning N=57		Shoreland management N=44		All N=101	
	Number (percent)							
Needed to do "substantial justice"	8	(10)	8	(15)	0		8	(9)
Not just a convenience	8	(10)	8	(15)	0		8	(9)
The problem is not so general that it would best be solved by a general regulation	4	(5)	4	(8)	2	(5)	6	(6)
The special conditions did not result from the applicants' own action	2	(3)	2	(4)	0		2	(2)
The property will not yield a reasonable return if the regulation is complied with	2	(3)	2	(4)	0		2	(2)
Will not confer a special privilege	1	(1)	1	(2)	0		1	(1)
Non-conforming uses are not a ground for issuing a variance	1	(1)	1	(2)	0		1	(1)
Permitted and conditional uses in other districts are not grounds for issuing a variance	1	(1)	1	(2)	0		1	(1)
The variance is not just to increase the value of the land	1	(1)	1	(2)	0		1	(1)
The reasons set forth on the application justify a variance	1	(1)	1	(2)	0		1	(1)

*N = total number of counties or ordinances.

Appendix B

Table B-1. Specific time limitations on variance procedures, 101 zoning ordinances, 80 counties, Minnesota, March 1, 1973

Type of limitation	Counties	Type of ordinance: Countywide zoning	Shoreland management	All
	Number (percent)			
None	46 (58)	10 (18)	40 (91)	50 (50)
Setting hearing date				
60 days after application	4 (5)	4 (7)	3 (7)	7 (7)
30 days after application	1 (1)	1 (2)	0	1 (1)
1 week after application	2 (3)	2 (4)	0	2 (2)
Making recommendations to deciding body				
60 days after application (planning commission)	11 (14)	11 (19)	0	11 (11)
10 days after application (town board)	1 (1)	1 (2)	0	1 (1)
Reaching final decision				
45 days after hearing	2 (3)	2 (4)	0	2 (2)
30 days after hearing	4 (5)	4 (7)	0	4 (4)
15 days after hearing	23 (29)	23 (40)	1 (2)	24 (24)
10 days after hearing	1 (1)	1 (2)	0	1 (1)
30 days after application	1 (1)	1 (2)	0	1 (1)
Appealing final decision				
90 days after decision	1 (1)	1 (2)	0	1 (1)
15 days after decision	3 (4)	3 (5)	1 (2)	4 (4)
10 days after decision	2 (3)	2 (4)	0	2 (2)
TOTAL*	80 (100)	57 (100)	44 (100)	101 (100)

*Totals adjusted for counties with more than one zoning ordinance.

[1]Black's Law Dictionary 1411 (4th ed. 1974).

[2]The name of the permit varies among counties but "principal use permit" and "accessory use permit" are perhaps most appropriate. "Building permit," though sometimes used, causes confusion between zoning and building codes.

[3]For a concise description of customary zoning regulations see *Zoning Principles and Definitions* Folder 251 (revised 1978); Agricultural Extension Service, University of Minnesota.

[4]Some counties may have exempted certain areas from countywide controls.

[5]Minn. Stat. §105.485 (1976). Originally passed as the shoreland management act of 1969, this statute required counties to enforce land use controls in the indicated areas and directed the Department of Natural Resourses (DNR) (then called the Department of Conservation) to promulgate (1) standards and criteria to be used in these controls and (2) a model shoreland management ordinance.

[6]Minn. Stat. §§394.21-.37 (1971). The only possible exception to this statement was found in Minn. Stat. §394.27 (1971), stating that the board of adjustment shall "act upon all questions as they may arise in the administration of any ordinance . . . and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing any ordinance . . . ." In 1974, extensive amendments to the county planning act contained provisions spelling out variance usage in considerable detail. The new statutory requirements will be footnoted in the subject matter sections in which they apply. It is curious that specific references to variances were omitted in §394.27, since the language used was generally taken from the standard zoning enabling act promulgated by the U.S. Department of Commerce in 1926, which provided expressly for variances. Advisory Committee on Zoning, Department of Commerce, A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations (rev. ed., 1926).

[7]See, for example, Minn. Reg. Cons. 70 (d) (1970 ed.), for an instructive definition of "variance," and Minn. Reg. Cons. 73 (b) (5) (1970 ed.), specifically authorizing (but not mandating) the use of variances under certain circumstances.

[8]This includes one ordinance which merely adopted by reference Minn. Stat. §394.27 (1971) which mandates the appointment of a board of adjustment and contains the language quoted in footnote 6.

[9]The Minnesota municipal planning act, e.g., expressly prohibits use variances. Minn. Stat. §462.358, subd. 6 (1978).

[10]The exception was one ordinance which specifically authorized the issuance of use variances.

[11]Because of 1974 amendment, the county planning act now prohibits the issuance of use variances, using language similar to the municipal planning act. Minn. Stat. §394.27, subd. 7 (1978).

[12]Minn. Stat. §394.27, subd. 1 and 5 (1971).

[13]Id., subd. 2.

[14]It should be pointed out here that any decision by the board of adjustment may be appealed to district court by the county board or any other affected party.

[15]This likelihood is reduced by the statutory requirement that at least one member of the board of adjustment must also be a member of the planning commission. Minn. Stat. §394.27, subd. 2 (1971). In fact, there is often more overlap than the law requires and the chairman of the board is likely to be a member of the planning commission. *Organizational Arrangements for County Planning*, Special Report 48 (revised 1976), Agricultural Extension Service, University of Minnesota.

[16]Minn. Reg. Cons. 75 (b) (1970 ed.). This may mean that variance granting or denial decisions with respect to shoreland ordinances made by other bodies are void or voidable.

[17]Minn. Stat. §394.30 (1971).

[18]Note, however, that one or more elected county commissioners sit on the planning commission as voting or ex-officio members, so some potential for undue political considerations still is present. *Organizational Arrangements for County Planning*, Special Report 48 (revised 1976), Agricultural Extension Service, University of Minnesota.

[19]See footnote 16.

[20]The 1974 amendments to the county planning act expressly provide that variance granting authority resides solely in the board of adjustment. It also changes the number of required members of the board of adjustment from 3 to a range of 3 to 7 and provides for the appointment of an alternate member for 3-member boards. Laws of Minn. Ch. 571, §§24 and 27 (1974).

[21]Minn. Stat. §394.27, subd. 6 (1971) expressly required hearing and notice when the board of adjustment is acting on appeals from any "order, requirement, decision, or determination" of the zoning administrator. If a request for a variance may be categorized as an appeal or denial of a request for a zoning permit, the notice and hearing requirement would apply.

[22]U.S. Const. amend. XIV.

[23]See footnote 16.

[24]The 1974 amendments to the county planning act explicitly require that a hearing be held prior to the grant or denial of a zoning variance. Laws of Minnesota, Ch. 571, §20 (1974).

[25]One among the 62 county zoning ordinances with no express hearing requirements did stipulate that notice of an application for a variance be sent to neighboring landowners.

[26]This assumes this was the intended method for three ordinances providing for public notice without specifying method.

[27]The 1974 amendments to the county planning act require that notice of hearings on zoning variance requests be published in both the official paper of the county and a newspaper of general circulation. They also stipulate written notice to all property owners of record in incorporated areas within 500 feet of the affected property, and notice to property owners of record in unincorporated areas within 1/2 mile of the affected property. Laws of Minnesota, Ch. 571, §21 (1974).

[28]The delegation doctrine finds its source in two features of federal constitutional law: the separation of powers and the 14th amendment due process prohibition.

[29]Minn. Reg. Cons. 77 (1970 ed.).

[30]As a result of 1974 amendments, before a variance may be lawfully granted, the following standards and criteria must be met: (1) consistent with comprehensive plan; (2) harmony with intent of the ordinance; (3) no reasonable use of property without a variance; (4) conditions justifying variance are unique to that property; (5) hardship not created by landowner; (6) variance won't result in change in character of locality; and (7) if reasonable use allowed, hardship must involve something more than economic considerations. Minn. Stat. §394.37, subd. 6 (1978).

[31]Because of 1974 amendments, appeals may now be taken only to district court and must be made within 30 days of receipt of notice on the decision. Minn. Stat. §394.27, subd. 9 (1978).

[32]After 1974 amendment of the county planning act, appeals of final decisions on variance requests can be made only to the district court. Minn. Stat. §394.27, subd. 9 (1978).

[33]Minn. Stat. §394.22, subd. 10 (1978).

[34]Minn. Stat. §394.27, subd. 7 (1978).

[35]Id.

[36]Minn. Stat. §394.26, subd. 1 and 2 (1978).

[37]Id.

[38]Minn. Stat. §394.26, subd. 3a (1978).

[39]Minn. Stat. §394.27, subd. 7 (1978).

[40]Id.

[41]Id.

[42]Id.

[43]Minn. Stat. §394.27, subd. 8 (1978).

Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Roland H. Abraham, Director of Agricultural Extension Service, University of Minnesota, St. Paul, Minnesota 55108. The University of Minnesota, including the Agricultural Extension Service, is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, creed, color, sex, national origin, or handicap. 30¢