



## Legislation Text

**File #:** Ord 15-26, **Version:** 3

Adding new sections to Legislative Code Chapters 73 and 61 in order to provide a process pursuant to Minn. Stat. § 471.194, Subd.3(6) to grant zoning use variances for the purpose of promoting the use and conservation of historic properties.

WHEREAS, the Council of the City of Saint Paul finds that historic use variance ordinances can be used to ensure adaptive re-use of historic structures within all zoning districts, and that “preservation, rehabilitation, and adaptive re-use of historic buildings support Saint Paul’s sustainability goals”, according to the Historic Preservation brochure for the 2008 Saint Paul Comprehensive Plan; and

WHEREAS, the Council further finds that historic use variance ordinances can contribute to the health, welfare, and safety of the public by preserving, protecting, and perpetuating the value of some of Saint Paul’s treasured historic buildings and sites by providing an historic use for the structure even if it is not currently allowed in that particular zoning district in which the structure or site sits, and serve as a valuable economic development tool; and

WHEREAS, the Historic Preservation Plan, part of the Saint Paul Comprehensive Plan and adopted by the City Council on March 11, 2009, includes Policy 5.3 which states as its goal to “realize the full economic potential of key historic resources by (a) rehabilitating key historic resources to serve as a catalyst for additional development in adjacent areas, and (b) integrate historic properties into new development to strengthen sense of place and provide a link between old and new;” Policy 5.4 which states as its goal to “invest in historic resources along transit corridors as part of a larger neighborhood revitalization and reinvestment strategy;” Policy 5.5 which states as its goal to “develop land use and regulatory incentives to make it easier and more feasible to rehabilitate” historic resources by developing “an ordinance that allows historic variances in order to alleviate undue hardships created by the historic character of designated properties and is consistent with the authority granted by State statute;” and

WHEREAS, the Historic Preservation brochure for the Saint Paul Comprehensive Plan states that “the character and design features of historic properties make them desirable for new uses that recognize the community’s special identity;... [historic preservation] also encourages mixed-use neighborhoods and pedestrian-friendly spaces;” and

WHEREAS, the Saint Paul City Council passed a resolution on October 22, 2014 requesting the Heritage Preservation Commission and the Planning Commission to jointly study historic use zoning variances and to report back to the City Council within 90 days (1) establishing rules for such an historic use variance, (2) establishing the bases for findings of fact determining that the variance is compatible with the original use of the property, as well as with preservation of the property, (3) preparing a process to allow for district councils (through the early notification system) to comment on any proposed historic use variance, and (4) further allowing the applicant or public an appeal process similar to other zoning matters; and

WHEREAS, on May 20, 2015, more than 90 days have elapsed without a report on creating an historic use zoning variance in the Saint Paul Municipal Ordinances; and

WHEREAS, a public hearing before the City Council having been conducted at which all interested parties were given an opportunity to be heard, the Council having considered all the facts and recommendations concerning the proposed zoning amendments, pursuant to the authority granted and in accordance with the procedures set forth in Minnesota Statutes 462.357;

NOW THEREFORE, the Saint Paul City Council hereby submits the following historic use variance ordinance in the zoning code for adoption:

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN

Section 1.

That Leg. Code § 73.02 is hereby amended by adding the following new sections to read:

**Sec. 73.02 - Definitions**

- (1) Heritage preservation site shall include any areas, places, buildings, structures, lands, districts, or other objects which have been duly designated heritage preservation sites pursuant to Section 73.04(3).
- (2) Historic use variance shall mean a departure from the uses permitted in chapter 66 of the zoning code governing a designated heritage preservation site where strict adherence would prevent reasonable re-use of the structure in a manner consistent with either the structure's historic use or a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (3) Secretary of the Interior's Standards for Rehabilitation shall mean the most recent standards for the treatment of historic properties established by the National Park Service, United States Department of the Interior and codified in 36CFR 67.7.

Section 2.

That Leg. Code § 73.04(5) is hereby amended by adding the following new language and then renumbering all sections following the amendment to Section 73.04(5) and revising the language of these sections consistent with their renumbering:

**Sec. 73.04 - Powers and duties of the commission**

The commission shall have the following powers and duties in addition to those otherwise specified in this chapter:

- ...
- (5) ~~Eminent domain~~ *Review of historic use variance applications.* ~~The heritage preservation commission may recommend to the city council, after review and comment by the city planning commission, that certain property eligible for designation as a heritage preservation site be acquired by gift, by negotiation or by eminent domain as provided for in Chapter 117 of Minnesota Statutes. In order to encourage the preservation and rehabilitation of designated heritage preservation sites, the commission shall review use variance applications and may recommend uses consistent with the any historic use or a new use that requires minimal change to the defining characteristics of the building and its site and environment in any zoning district where such uses are not permitted under current zoning.~~
  - (6) ~~Education~~ *Eminent domain.* ~~The commission shall work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city. It shall keep current and public a register of designated heritage preservation sites and areas. The heritage preservation commission may recommend to the city council, after review and comment by the city planning commission that certain property eligible for designation as a heritage preservation site be acquired by gift, by negotiation or by eminent domain as provided for in Chapter 117 of Minnesota Statutes.~~
  - (7) ~~Technical experts~~ *Education.* ~~The commission may accept the services on a permanent or part-time basis of technical experts and such other persons as may be required to perform its duties. The commission shall work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city. It shall keep current and public a register of designated heritage preservation sites and areas.~~
  - (8) ~~Solicitation of gifts~~ *Technical experts.* ~~The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purposes of heritage preservation. The commission may accept the services on a permanent or part-time basis of technical experts and such other persons as may be required to perform its duties.~~
  - (9) ~~National Register nominations~~ *Solicitation of gifts.* ~~The commission shall make no application to the National Register or to the state for the designation of a historic site or district without the consent of the city council. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purposes of heritage preservation.~~
  - (10) ~~Street name changes~~ *National Register nominations.* ~~The commission shall review and comment on any proposed name change for a city street which has had its current name for fifty (50) years or more prior to action on the name change by the city council. In their review of and recommendations on such street name changes, the commission shall utilize guidelines and criteria as adopted by the commission on April 14, 1988. The commission shall make no application to the National Register or to the state for the designation of a~~

historic site or district without the consent of the city council.

(11) ~~*Written summary of commission expertise*~~ *Street name changes*. The commission shall prepare and maintain a summary of the skills, knowledge, competencies and technical expertise in heritage preservation and related areas which are needed by the commission to carry out its duties and functions under this chapter, but which its membership does not have or in which the commission should have more depth. Such summary shall be in writing, and shall be updated when there are vacancies in the membership of the commission, and before the regular expiration of the terms of any members of the commission. Such summary and each update thereof shall be filed with the office of the city clerk, and shall be delivered to the mayor and council when prepared. City staff assigned to assist the commission shall assist in the preparation of such summary. Failure to prepare or update such summary shall not in any respect limit or affect the ability of the mayor to appoint or reappoint or the council to advise and consent to appointments or reappointments to the commission. The commission shall review and comment on any proposed name change for a city street which has had its current name for fifty (50) years or more prior to action on the name change by the city council. In their review of and recommendations on such street name changes, the commission shall utilize guidelines and criteria as adopted by the commission on April 14, 1988.

(12) ~~*List of organizations*~~ *Written summary of commission expertise*. The city staff assigned to assist the commission shall prepare and maintain a list of city organizations, professional associations, businesses and individual persons who are known to the commission or to the staff to have (i) a demonstrated interest in historic preservation, or (ii) skills, knowledge, competencies or technical expertise in heritage preservation or related areas. Such list shall be filed with the office of the city clerk, and shall be delivered to the mayor and council when prepared or updated. Forty-five (45) days before anticipated or actual vacancies occur on the commission and before the regular expiration of the terms of members of the commission, city staff shall notify this list of such vacancies with the goal of generating a pool of qualified applicants for appointment to the commission. Failure to include anyone on the list or to send them notice shall not in any respect limit or affect the ability of the mayor to appoint or the council to advise and consent to appointments or reappointments to the commission. The commission shall prepare and maintain a summary of the skills, knowledge, competencies and technical expertise in heritage preservation and related areas which are needed by the commission to carry out its duties and functions under this chapter, but which its membership does not have or in which the commission should have more depth. Such summary shall be in writing, and shall be updated when there are vacancies in the membership of the commission, and before the regular expiration of the terms of any members of the commission. Such summary and each update thereof shall be filed with the office of the city clerk, and shall be delivered to the mayor and council when prepared. City staff assigned to assist the commission shall assist in the preparation of such summary. Failure to prepare or update such summary shall not in any respect limit or affect the ability of the mayor to appoint or reappoint or the council to advise and consent to appointments or reappointments to the commission.

(13) *List of organizations*. The city staff assigned to assist the commission shall prepare and maintain a list of city organizations, professional associations, businesses and individual persons who are known to the commission or to the staff to have (i) a demonstrated interest in historic preservation, or (ii) skills, knowledge, competencies or technical expertise in heritage preservation or related areas. Such list shall be filed with the office of the city clerk, and shall be delivered to the mayor and council when prepared or updated. Forty-five (45) days before anticipated or actual vacancies occur on the commission and before the regular expiration of the terms of members of the commission, city staff shall notify this list of such vacancies with the goal of generating a pool of qualified applicants for appointment to the commission. Failure to include anyone on the list or to send them notice shall not in any respect limit or affect the ability of the mayor to appoint or the council to advise and consent to appointments or reappointments to the commission.

Section 3.

That Leg. Code Chap. 73.03 is hereby amended by adding the following new section entitled:

**73.03.1 Review of historic use variance applications.**

*(a) Application.* Any person having an ownership, leasehold, or contingent interest in the heritage preservation site is eligible to file an application with the commission to permit use of the site in a manner consistent with its historic use or a new use consistent with section 73.04(5) of this chapter, in any zoning district where such proposed use is not permitted under the current zoning classification. The application shall be filed using the

format established by the commission and shall include payment of the required fee. The application shall include a description of the proposed use, and its consistency with the structure's historic use or that the new use is consistent with section 73.04(5) of this chapter. The application shall describe all necessary exterior modifications to the structure, property, and site and include an assessment of the impact of these modifications on the historic integrity of the site, and further shall describe all interior architectural features unique to the historic period. The application shall also include a site plan, photos of existing conditions and architectural plans drawn to scale showing any proposed modifications.

(b) Fees. A fee to defray the costs incurred to review a use variance application shall be paid by the applicant at the time the use variance application is filed. The application fee shall be paid to the department of planning and economic development in the amount specified under Leg. Code § 61.302(b)(14)(g).

(bc) Staff Review. Commission staff shall review the completed application and prepare a report and recommendation for the commission. The report shall include the following findings:

(1) The proposed use is reasonable and compatible with the historic use(s) of the site or that the new use is consistent with section 73.04(5) of this chapter.

(2) The proposed use complies with the adopted preservation program, and the United States' Secretary of the Interior's Standards for Rehabilitation, as applicable.

(3) The historic use variance is necessary to alleviate practical difficulties unique to the heritage preservation site that prevents its use in a manner consistent with its historic use or that the new use is consistent with section 73.04(5) of this chapter, and that these difficulties were not created by the applicant.

(4) The proposed use is compatible with existing uses in the surrounding area and the underlying zoning classifications in the area.

(5) The proposed use is consistent with the comprehensive plan.

(c) Commission review. The commission may conduct a public hearing on the application. After considering the report and recommendation of staff and the testimony from any public hearing, the commission shall make a recommendation to approve, approve with conditions, or deny the application and shall forward the application, the report of staff, the commission's recommendation and all other materials relative to the application to the planning commission.

(d) Planning commission review. Upon receipt of the heritage preservation commission's report and recommendation, the planning commission shall hold a public hearing in compliance with the procedures under section 61.303 of this code for the purpose of making findings regarding the application's consistency with the comprehensive plan and the application's compatibility with the underlying zoning classifications in the surrounding area. The Commission shall also review any other variances of zoning code provisions that accompany the use variance application. The planning commission shall then forward the documentation and recommendation of the heritage preservation commission together with its own findings and recommendation to the city council.

(e) City council public hearing and decision. The city council shall review all materials relative to the case and shall decide by resolution whether to approve, approve with conditions, or deny the application. The council shall hold a public hearing after notice of the public hearing shall have been published in a newspaper of general circulation and sent to the variance applicant at least ten (10) days prior to the date of the hearing. The council may consider any historic use or the new use provided it is consistent with section 73.04(5) of this chapter. If the council decision is other than the recommendation of the staff or the commissions, the council shall provide revised findings to support its decision.

(f) Period of decision. The decision of the city council shall be valid for a period not longer than two (2) years following the date of the council's motion of intent approving the application unless a city permit(s) is obtained within that time and/or steady progress is being made to establish the use. A use variance granted under this section shall terminate and any subsequent use of the property or premises shall be in conformance with the property's underlying zoning classification where the use permitted by the variance is destroyed by fire or other peril to the extent greater than 50 percent of its estimated market value as indicated in the records of the county assessor at the time of the damage.

Section 4.

That Leg. Code § 61.601 is hereby amended by adding the following new section:

#### **Section 61.601. Variances**

(g) The application for a historic use variance under Title IX, City Planning, at Section 73.03.1 of this code, as authorized by Minn. Stat. § 471.193, Subd. 3(6), shall be granted only to a property that is a locally designated heritage preservation site and the use variance is the minimum needed to enable the property to be used in a manner that will have the least impact upon its historic character and the character of the surrounding area.

Section 5.

That Leg. Code § 61.302, "Application forms and fees," is hereby amended by adding the following new language to section 61.302(b)(14) "Administrative staff review:"

... .

Seven hundred dollars (\$700.00) for a historic use variance.

Section 6.

This ordinance shall take effect thirty (30) days after its passage, approval, and publication.