

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0681**

Dan Murphy,
Appellant,

vs.

City of Minneapolis,
Respondent,

Beard Manager, LLC,
Respondent.

**Filed April 7, 2025
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-23-3705

Thomas F. DeVincke, Patrick B. Steinhoff, Malkerson Gunn Martin, LLP, Minneapolis,
Minnesota (for appellant)

Kristyn Anderson, Minneapolis City Attorney, J. Haynes Hansen, Tracey N. Fussy,
Assistant City Attorneys, Minneapolis, Minnesota (for respondent City of Minneapolis)

Kyle E. Hart, Richard G. Jensen, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis,
Minnesota (for respondent Beard Manager, LLC)

Considered and decided by Connolly, Presiding Judge; Wheelock, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

SYLLABUS

The Minnesota Municipal Planning Act (MPA), Minn. Stat. §§ 462.351-.365 (2024), authorizes municipalities to provide concurrent authority to planning agencies pursuant to section 462.354, subdivision 1, and boards of adjustments and appeals pursuant to section 462.354, subdivision 2, to hear and decide requests for variances.

OPINION

WHEELOCK, Judge

Appellant Dan Murphy sought review in district court of respondent City of Minneapolis's approval of respondent developer Beard Manager LLC's variance applications, alleging that (1) the MPA preempts the portion of the city's zoning code that grants the city's planning agency and board of adjustments concurrent authority to review applications for zoning variances and (2) the city lacked a reasonable basis to approve the variance applications. The district court determined that the preemption argument failed and that the city had a reasonable basis to approve the variance applications. Murphy sought further review by appealing to our court. Applying the appropriate standards, we first review the district court's determination of preemption and affirm on that issue and then consider the variance grants, concluding that one variance is void and affirming the grant of the other.

FACTS¹

Murphy, a Minneapolis homeowner, challenges the city’s decisions to grant two zoning variances for a project on the northwest corner of West 50th Street and Beard Avenue South in the Fulton neighborhood. The project is a proposal to construct a mixed-use building with 63 residential units, roughly 1,500 square feet of commercial space on the ground level, and a two-floor parking garage with one floor below ground and one at ground level. Murphy’s home is located on the same block as the project site.² The neighborhood is composed primarily of single-family and two-family homes. A large senior-living complex is located nearby on West 50th Street, and two commercial centers are within walking distance of where West 50th Street intersects with Xerxes Avenue South and with France Avenue South. Property within the city is subject to state and local law, including the city’s zoning code and its current comprehensive plan.

The 2040 Comprehensive Plan and Minneapolis Zoning Code

City officials may guide a municipality’s development toward priorities established in the city’s “comprehensive municipal plan.” Minn. Stat. § 462.353, subd. 1.³ A

¹ We take the facts from the municipal record. *See Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988).

² We use the term “project” to refer to the developer’s proposal to construct a mixed-use building with a parking garage and the term “project site” to refer to the developer’s lot on West 50th Street and Beard Avenue South.

³ We cite the most recent version of the MPA because, although the legislature amended certain provisions of the MPA in 2024, it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on

comprehensive plan is a “compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development” of a municipality. Minn. Stat. § 462.352, subd. 5. The Minneapolis 2040 Plan is the city’s current comprehensive plan and was enacted pursuant to the MPA. City of Minneapolis Dep’t of Cmty. Plan. & Econ. Dev., *Minneapolis 2040—The City’s Comprehensive Plan* 6 (2020) [hereinafter *2040 Plan*], https://minneapolis2040.com/media/2018/pdf_minneapolis2040_updated-june-2024.pdf [<https://perma.cc/H8EF-TNNP>]. The 2040 Plan designates parts of the city as “goods and services corridors.” *Id.* at 61. Goods and services corridors serve two related purposes:

- To indicate where commercial uses should front^[4] in relation to properties guided for commercial future land uses.
- . . . [To] identify where the establishment or expansion of commercial uses can be considered. Properties immediately adjacent to a Goods and Services Corridor may be considered for commercial activity, allowing for uses similar in scale and scope to the Neighborhood and Corridor Mixed Use categories.

Id. at 59. West 50th Street—the location of the project site—is a goods and services corridor.

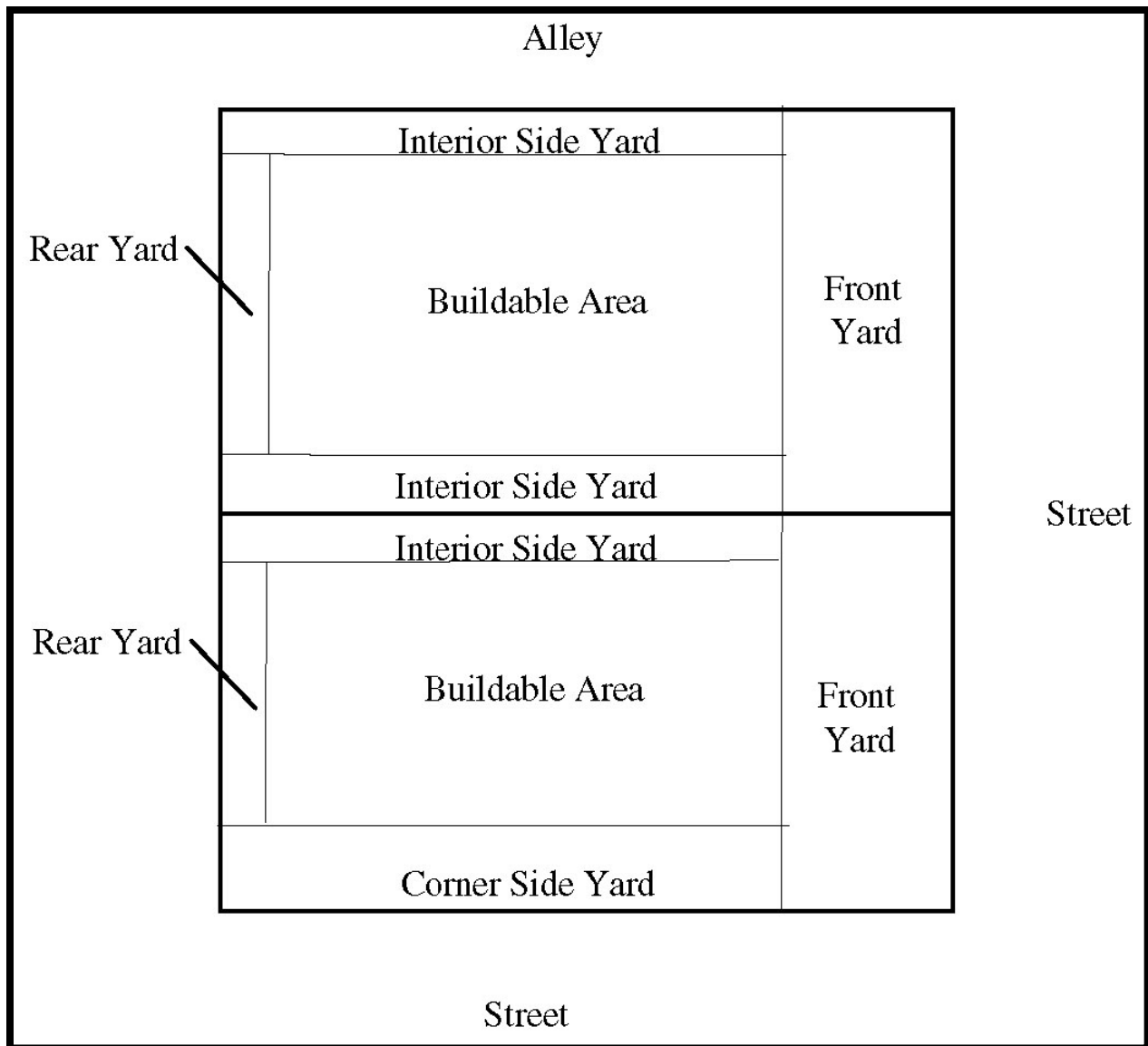
a case”). For the same reason, we also cite the current versions of other statutes and ordinances discussed in this opinion unless otherwise noted.

⁴ Zoning laws sometimes use “front” as a verb, but it generally means “[t]he side or part of a building or lot that is open to view, that is the principal entrance, or that faces out to the open.” *Black’s Law Dictionary* 807 (12th ed. 2024) (defining “front” as a noun). Here, the 2040 Plan explains that, when developers build along goods and services corridors, they should place the main entrances of their buildings along the street designated as a goods and services corridor rather than a side street. *2040 Plan, supra*, at 59 fig.T1.2.

The 2040 Plan also divides the city into 14 “Built Form” districts that guide “the scale of development for every parcel in the city, independent of the uses allowed on the site.” *Id.* at 67. The 2040 Plan provides that “[t]he built form of all new and remodeled buildings must be consistent with the guidance of the Built Form Map.” *Id.* The project site is in a Corridor 4 District, which the 2040 Plan says “should reflect a variety of building types on both small and moderate-sized lots.” *Id.* at 69.

The city adopted its zoning code for numerous reasons, including to “implement the policies of the comprehensive plan,” “promote and protect public health,” and “encourage the most appropriate use of land.” Minneapolis, Minn., Code of Ordinances (MCO) §§ 520-570 (2023).⁵ The city’s zoning code generally requires that landowners maintain setbacks, which are yards along lot lines that are unobstructed to a specified depth or width. MCO § 565.260. The zoning code sets forth the policy that undergirds setback requirements, stating: “Yard controls provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards.” MCO § 540.800. The image below, which appears in section 565.260 of the zoning code, illustrates various types of yards that the zoning code recognizes, including rear, side, and front yards.

⁵ The city recodified and amended its zoning code in 2023. Minneapolis, Minn., Ordinance No. 2023-032 (May 30, 2023). We cite the current version of the city’s zoning code unless it has changed in relevant part.



Pursuant to the zoning code, property owners can apply for variances from the setback requirements if they seek to build in a manner that does not comply with the zoning code. MCO § 525.460(a). To obtain a variance, an applicant must show that “complying with the ordinance poses practical difficulties,” MCO § 525.460(c), and present evidence to the city demonstrating that (1) “[c]hallenges exist in complying with the ordinance because of circumstances unique to the property,” (2) the property owner seeks to use the property in a reasonable way that keeps “with the spirit and intent of the ordinance and the

comprehensive plan,” and (3) “[t]he proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.” MCO § 525.460(c)(3).

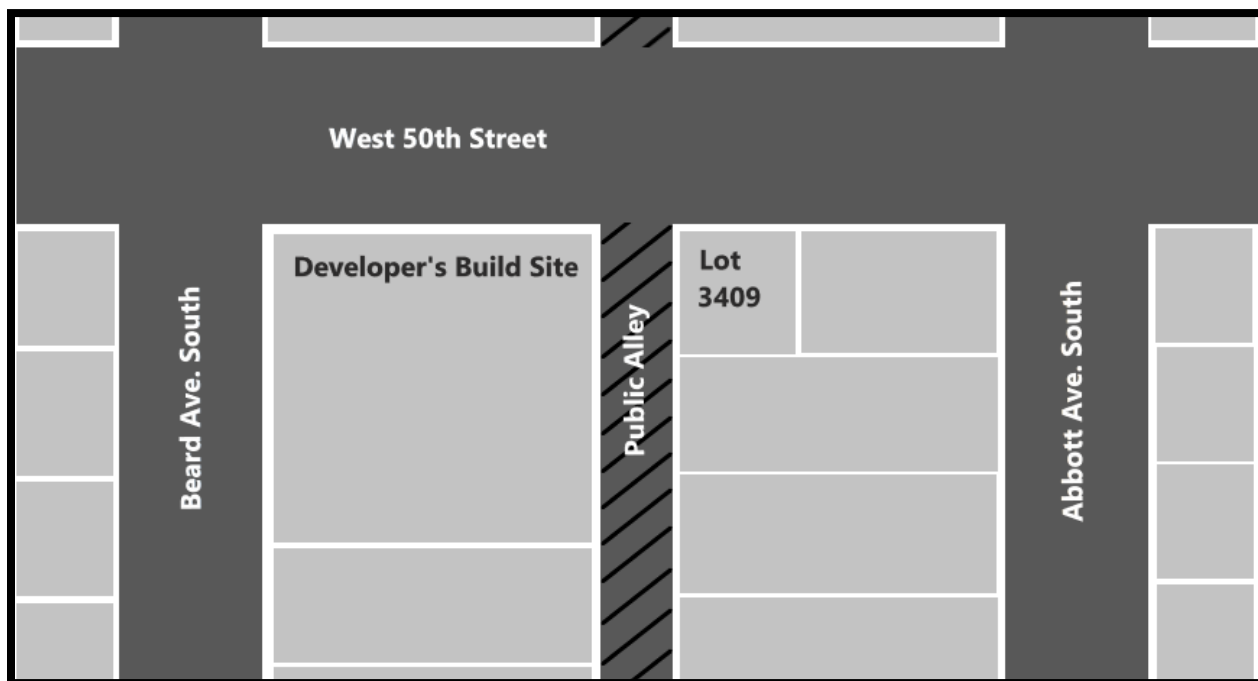
The city’s department of community planning and economic development (CPED) typically reviews variance applications and makes a recommendation to the city planning commission to grant or deny each application. MCO § 525.110; *accord State ex rel. Neighbors for E. Bank Livability v. City of Minneapolis*, 915 N.W.2d 505, 509 (Minn. App. 2018) (*E. Bank*), *rev. denied* (Minn. Aug. 7, 2018). Individuals who disagree with CPED’s recommendation can seek review by appealing to the “zoning and planning committee, which recommends its decision to the ultimate decision maker—the Minneapolis City Council.” *E. Bank*, 915 N.W.2d at 509. When multiple land use reviews are required for a project, the city’s zoning code directs that the city’s planning commission is responsible for reviewing all the applications pursuant to the city zoning code’s concurrent-review provision. MCO § 525.20. CPED then conducts an initial review and makes a recommendation to the planning commission on each application.

As is pertinent here, the developer submitted several applications for the project in November 2022, including variance applications for (1) a reduction of the reverse-corner-lot setback requirement along West 50th Street and (2) a reduction of the rear-yard setback requirement along the alley.⁶ The overarching dispute between Murphy and respondents is over the city’s approval of these two variance applications.

⁶ The developer also submitted applications for rezoning of the site, a site plan review, and an administrative height increase, none of which are at issue on appeal.

The Reverse-Corner-Lot Variance

A small lot that is not owned by any of the parties—lot number 3409—is located across a public alley to the east of the project site. Unlike the other lots on the block—which front either Beard Avenue South or Abbott Avenue South—lot 3409 fronts West 50th Street. Because the other three borders of lot 3409 are the alley and two abutting lots, the part of the property along West 50th Street is lot 3409’s only potential “front yard.” The illustration below depicts the project site and lot 3409.⁷



The positioning of the project site relative to lot 3409 rendered the project site a “reverse corner lot,”⁸ which the city’s zoning code defines as a “corner lot that includes

⁷ We created this map—a simplified version—based on the maps in the record; it is not drawn to scale.

⁸ This type of lot is alternatively called a reverse-corner-yard lot, a reverse-corner front-yard lot, a double front-yard lot, or a lot with two front-yard setback requirements.

more than one (1) lot line adjacent to streets of which one (1) lot line is substantially a continuation of the front lot line of the adjacent property to the rear.” MCO § 565.130 (defining “reverse corner lot”). The version of the city’s zoning code that existed when the developer submitted its variance applications established a 15-foot setback for front yards in the Corridor 4 Built Form District. MCO § 552.810 tbl.552-18 (2020). At the time the developer applied for its reverse-corner-lot variance, the project site was subject to reverse-corner-lot setback requirements because the project site’s corner side yard runs along West 50th Street and the project site is adjacent to lot 3409, which fronts West 50th Street. But if lot 3409 had not rendered the project site a reverse corner lot, the project site would have had a “corner side yard” along West 50th Street that was subject to a 12-foot setback. *See* MCO § 540.860 tbl.540-19 (establishing that, for a 58-foot building in this area, like the one proposed by the developer here, the standard corner-side-yard setback is 12 feet). However, because lot 3409 rendered the project site a reverse corner lot, the city’s zoning code treated the project site’s yard along West 50th Street as a second “front yard” of the project site that is subject to a minimum 15-foot front-yard setback instead of a 12-foot corner-side-yard setback. *See* MCO § 540.850 tbl.540-18.

In its reverse-corner-lot variance application, the developer requested a setback along West 50th Street of 12 feet, 3 inches, rather than the second front-yard setback of 15 feet.

The Rear-Yard Variance

The city’s zoning code provides that the rear-yard setback for a proposed building is determined by its height. MCO § 540.870 tbl.540-20. Because the project includes a

building with a height of 58 feet, the zoning code dictates a minimum rear-yard setback of 9 feet. *Id.* The 2040 Plan identifies the project site as being in a “Corridor 4 Built Form Overlay District” and a goods and services corridor, which means that the property may be considered for commercial development and that there should be a variety of property types in the area. *2040 Plan, supra*, at 59, 69. In addition, the project site “slopes significantly from north to south along the alley,” which is a physical attribute of the project site that affects the construction of the parking lot that was designed to accommodate a 1:1 ratio of parking spaces to residential units while maintaining the building’s required front-yard setbacks.

In its rear-yard variance application, the developer requested a rear-yard setback of five feet along the alley, rather than the standard setback of nine feet, to accommodate the slope of the project’s parking-lot access point while maintaining the project site’s other yards.

City Grant of the Variances

The developer submitted the variance applications in conjunction with applications for rezoning, height increase, and site plan review. Because multiple land use reviews were required for the project, the city’s zoning code directed that the city’s planning commission was responsible for reviewing all the applications pursuant to the city zoning code’s concurrent-review provision. MCO § 525.20. After CPED reviewed the developer’s variance applications, it recommended to the planning commission that both be approved. The planning commission adopted CPED’s findings and approved both of the developer’s variance applications.

In approving the reverse-corner-lot variance application, the planning commission reasoned that “[t]he reverse corner condition creates a practical difficulty with constructing a multiple-family structure on a goods and services corridor by requiring a yard that is greater than the established setbacks in the general area.” The planning commission also adopted CPED’s conclusion that these difficulties are not based on economic considerations alone because approving the variance applications, along with the developer’s other requests for the project, would bring the project site in line with the 2040 Plan’s land use policy by adding “new housing options to a high-demand area of the city with good access to transit, employment and goods and services.”

In approving the rear-yard variance application and adopting CPED’s findings, the planning commission reasoned that (1) the portions of the structure that will rise above the first floor would comply with the nine-foot rear-yard setback requirement that applies to other 58-foot-tall buildings in this area and (2) “the extra space is required at the rear yard to accommodate the slope of the parking access while maintaining established yards in the front of the building.” The planning commission also adopted CPED’s finding that “the intent of setback regulations [is] to maintain access to light and air for adjacent properties, to provide adequate separation between uses[,] and to encourage orderly development,” and it determined that granting a variance for a rear-yard setback of five feet, given the plan for all floors above the first floor to comply with the larger setback, “will not impact the amount of light and air that adjacent properties receive.”

Judicial Review and Amendments to the City's Zoning Code

Murphy unsuccessfully appealed the planning commission's grant of the variances to the city's zoning and planning committee, and ultimately, the city council and mayor affirmed the planning commission's grant of the variances. Murphy then sought judicial review of the city's decision in district court, making the same arguments he raises here. The parties filed cross-motions for summary judgment, and the district court ruled in favor of respondents.

On May 30, 2023, the city amended its zoning code “in the form of a complete revision,” which included, among other things, creating an exception to reverse-corner front-yard setbacks so that they no longer apply to reverse-corner lots “when crossing an alley or other public right-of-way.” Minneapolis, Minn., Ordinance No. 2023-032 (May 30, 2023) (codified at MCO § 540.830).⁹ The amendment went into effect on July 1, 2023. *Id.*

On April 24, 2024, Murphy filed a notice of appeal. In their initial briefs and at oral argument to this court, the parties did not address how the May 2023 amendments could affect the issues on appeal. Then, seven days after oral argument, the city amended the city's zoning code to state that land use applicants “may avail themselves of less restrictive requirements provided by the zoning regulations in effect on July 1, 2023, or later” and that “[a]ny zoning approval . . . that becomes unnecessary through the adoption of less

⁹ The 2023 recodification and amendments resulted in renumbered sections. Although some sections were substantively amended, others remain unchanged but are under a new section number; for example, the definition of “reverse corner lot” in the current version is the same, but it is now contained in section 565.130 instead of section 520.160.

restrictive regulations is void, and the building or use is no longer subject to the former regulations.” Minneapolis, Minn., Ordinance No. 2024-044 (Nov. 20, 2024) (codified at MCO § 520.40(b) (2024)). The relevant text of Minneapolis Ordinance No. 2024-044 states:

Section 1. That Section 520.40 contained in Chapter 520, General Provisions, be amended to read as follows:

520.40. Scope of regulations. (a) *In general.* All uses of land or structures, all alterations, expansions or relocations of existing structures, and all expansions, relocations or intensifications of existing uses shall be subject to all applicable regulations of this zoning ordinance.

(b) *Exceptions.* ~~Buildings and uses that require a land use application under the 1999 zoning code will be regulated in accordance with the 1999 zoning code when a complete land use application is submitted prior to July 1, 2023. In all other instances, where a building permit (or grading or earth retention permit for construction of a building) has been issued and all required environmental approvals have been received for the establishment, construction, alteration, expansion, relocation, or intensification of any structure or use prior to the effective date of this zoning ordinance, such action may be completed in accordance with the regulations of the 1999 zoning code, provided the use is established, or construction or excavation is begun with ninety (90) days of such date and proceeds on a continuous basis toward completion, and subject thereafter to the regulations of Chapter 535, Article VI, Nonconforming Uses and Structures. A complete land use application submitted prior to July 1, 2023, shall be reviewed utilizing the zoning regulations and review processes in place at the time the complete application was submitted and buildings or uses may be established and completed in accordance with the regulations of the 1999 zoning code. However, such buildings and uses shall not be subject to the 1999 zoning code in perpetuity. An applicant may avail themselves of less restrictive requirements provided by the zoning regulations in effect on July 1, 2023, or later. Any~~

zoning approval granted by the city planning commission, board of adjustment or city council that becomes unnecessary through the adoption of less restrictive regulations is void, and the building or use is no longer subject to the former regulations. Changes to the approved building or use shall be regulated by the applicable regulations governing such changes in this zoning ordinance effective at the time such changes are proposed. Changes to the approved building or use may require new or additional land use applications as described in Chapter 525, Administration and Procedures and Chapter 550, Development Standards.

Section 2. That the amendment described herein to Section 520.40 contained in Chapter 520, General Provisions is effective retroactively from the effective date of Ordinance No. 2023-032, which is July 1, 2023.

Id. §§ 1-2. After the city enacted Minneapolis Ordinance No. 2024-044, we requested supplemental briefing from the parties to address whether these amendments to the zoning code affect this court’s analysis of the issues on appeal.

ISSUES

- I. Did the city’s planning commission have authority consistent with the MPA to grant the variances?
- II. Do the amendments to the city’s zoning code render the reverse-corner-lot variance void?
- III. Did the city have a reasonable basis to grant the rear-yard variance?

ANALYSIS

Murphy challenges the city’s grant of the two variances for the project. First, Murphy contends that the MPA preempts the city zoning code’s concurrent-review provision and thus that the city’s planning commission lacked authority to review and approve the variance applications. Second, as to the reverse-corner-lot variance, he

contends that the city's amendments to the zoning code do not render it void and that the city did not have a reasonable basis to grant it. And third, as to the rear-yard variance, he contends that the city did not have a reasonable basis to grant it. Respondents argue the contrary. We consider each of Murphy's arguments in turn.

I. The city's planning commission had the authority to grant the variances under the Municipal Planning Act.

"Preemption of municipal ordinances by state law is a legal question subject to de novo review." *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017). We begin with an overview of the applicable state and municipal laws, namely the MPA and the city's charter and code, before analyzing the merits of Murphy's preemption argument.

The Municipal Planning Act

The legislature passed the MPA to provide cities the "necessary powers and a uniform procedure for adequately conducting and implementing municipal planning." Minn. Stat. § 462.351. To that end, section 462.354 of the MPA provides for the establishment of two municipal entities that have certain municipal planning powers: a "planning agency" in subdivision 1 and a "board of adjustments and appeals" (board) in subdivision 2. Minn. Stat. § 462.354. Subdivision 1 provides that the planning agency may take the following alternate forms:

(1) It may consist of a planning commission, which may or may not include municipal officials among its members. The planning commission may be provided with staff which may be a division of the administrative structure of the municipal government. The commission shall be advisory directly to the governing body.

(2) It may consist of a planning department with a planning commission advisory to it and shall function as a department advisory to the governing body and the municipal administration. The planning department may be provided with an executive director and other staff as in the case of other municipal departments.

Id., subd. 1. Subdivision 2 provides that the board may take the following forms:

The governing body of any municipality adopting or having in effect a zoning ordinance or an official map shall provide by ordinance for a board of appeals and adjustments. The board shall have the powers set forth in sections 462.357, subdivision 6 and 462.359, subdivision 4. Except as otherwise provided by charter, the governing body may provide alternatively that there be a separate board of appeals and adjustments or that the governing body or the planning commission or a committee of the planning commission serve as the board of appeals and adjustments, and it may provide an appropriate name for the board. The board may be given such other duties as the governing body may direct.

Id., subd. 2. Thus, the MPA prescribes specific duties for the planning agency and the board. Among these duties, a planning agency has the duty to prepare and propose ways to implement a city's comprehensive plan, and a board has the duty to hear and decide requests for variances. Minn. Stat. §§ 462.354-.355, .357, subd. 6. The MPA also provides that the planning agency and board may be one entity and decide variance applications. Minn. Stat. § 462.354, subd. 2. Importantly, the MPA also expressly provides that municipalities may impose other duties on planning agencies by charter or ordinance. *Id.*, subd. 1.

The City Charter and Zoning Code

At the municipal level, the Minneapolis City Charter and the city zoning code create structure and processes that apply to the city's planning in addition to the MPA. The city

charter provides for the establishment of a “planning commission,” Minneapolis, Minn., City Charter (MCC) § 7.2(a)(9) (2021), and the city’s zoning code provides for the establishment of a board, MCO § 525.140(a). The city charter sets forth the composition of the planning commission, MCC § 7.2(e)(1) (2021), and identifies specific functions that the planning commission must perform, MCC § 7.2(e)(2) (2021). The city charter also directs the planning commission to handle issues relating to the city’s comprehensive plan and “perform any other duties for which [the city’s zoning code] provides.” *Id.* The city’s zoning code provides that the planning commission’s duties include the review of land use applications and site plans, MCO § 525.130(b), and that the board’s duties include hearing and deciding variance applications. MCO § 525.140(b)(1).

The concurrent-review provision of the city’s zoning code provides that, when more than one land use review is needed and the land use reviews would be assigned to both the planning commission and the board, all land use reviews are reviewed by the planning commission:

[T]o provide for the efficient administration of this zoning ordinance, whenever a project or proposal requires more than one (1) land use review, including but not limited to . . . site plan review, rezoning . . . variance . . . all applications shall be processed concurrently. *If the required land use reviews are assigned to both the city planning commission and the board of adjustment, the city planning commission shall review all applications in accordance with the standards herein described.*

MCO § 525.20 (emphasis added).

The MPA, city charter, and city zoning code thus function in concert to create the multi-faceted system that all entities and individuals must navigate when seeking necessary

approvals to build a new project within the city. With this system in mind, we turn to Murphy's preemption argument.

The MPA does not preempt the city zoning code's concurrent-review provision.

Murphy argues that the MPA preempts the city zoning code's concurrent-review provision by way of conflict preemption¹⁰ and that the city violated the MPA by granting variance-review authority to both its planning agency and its board because it violates the legislature's intent that municipalities use a uniform procedure for municipal planning. *See* Minn. Stat. § 462.351 (establishing that municipalities use a "uniform procedure for adequately conducting and implementing municipal planning"). He argues that, because statutes prevail over municipal law, the city zoning code's concurrent-review provision must be preempted by the MPA. Respondents disagree, arguing that the MPA explicitly permits the city zoning code's concurrent-review provision. We agree with respondents.

Conflict preemption occurs when state and local laws "contain express or implied terms that are irreconcilable with each other," when "the ordinance permits what the statute forbids," or when "the ordinance forbids what the statute expressly permits." *Minn. Chamber of Com. v. City of Minneapolis*, 944 N.W.2d 441, 447 (Minn. 2020) (emphasis omitted) (quotations omitted).

¹⁰ Although it is unclear in his brief, Murphy specified at oral argument that he bases his preemption argument on a theory of conflict preemption and not express or field preemption. Express preemption occurs when "the legislature [has] expressly declared that state law shall prevail over municipal regulation." *Bicking*, 891 N.W.2d at 313 n.8 (quotation omitted). Field preemption occurs when "the Legislature has comprehensively addressed the subject matter such that state law now occupies the field." *Id.*

To support his position that the MPA does not authorize concurrent authority to review variances, Murphy relies on the language in Minn. Stat. § 462.354, subd. 2, that municipalities “shall provide by ordinance for a board of appeals and adjustments. The board shall have the powers set forth in section[] 462.357, subdivision 6”—the subdivision that addresses the hearing and granting of variance requests. Murphy’s argument appears to hinge solely on this language. Murphy argues that, because the MPA’s plain language gives a board the power to review variance applications but does not expressly give this authority to planning agencies when a board also exists, the city zoning code’s concurrent-review provision violates the MPA. *Compare* Minn. Stat. § 462.354, subd. 2 (providing that boards hear requests for variances), *with id.*, subd. 1 (lacking such language). We are not persuaded. Although the MPA does not expressly contemplate the city zoning code’s concurrent-review provision, it gives municipalities the ability to assign other duties to their planning agencies. Minn. Stat. § 462.354, subd. 1.

The plain language of the MPA states that a city may assign “other powers and duties” to its planning agency via ordinance or charter. *Id.* Consistent with Minn. Stat. § 462.354, subd. 1, the city charter and the city’s zoning code require that the city establish a planning agency, which it did when it created the planning commission. And the planning commission has the authority to “perform any other duties for which an ordinance provides.” MCC § 7.2(a)(9), (e)(2)(D). The city expressly assigned as one of those other duties the review of variance applications when “land use reviews are assigned both to the city planning commission and the board of adjustments.” MCO § 525.20. The city zoning code’s concurrent-review provision affords both its planning commission and its board

jurisdiction to review variance applications when doing so provides for efficient administration. *Id.*

Because the city zoning code's concurrent-review provision is authorized by the plain language of Minn. Stat. § 462.354, subd. 1, it does not conflict with the terms of the MPA and we reject Murphy's conflict-preemption argument.

Murphy argues that *Nordmarken v. City of Richfield* supports a conclusion that the MPA preempts the city zoning code's concurrent-review provision because, there, we concluded that the MPA preempted a different provision in a city charter. 641 N.W.2d 343, 346-49 (Minn. App. 2002), *rev. denied* (Minn. June 18, 2002). In *Nordmarken*, voters sought to enforce a provision in Richfield's city charter that "reserve[d] to the voters the right to petition for referendum to approve or disapprove ordinances the city council enacts." *Id.* at 346. This court, however, concluded that the procedures detailed in the MPA and the Metropolitan Land Planning Act (MLPA), Minn. Stat. §§ 473.85-.871 (2000), preempted the charter's provision because the acts provided "a detailed and elaborate structure of procedural authority and processes for comprehensive land use planning" such that the legislature had "evinced its intent to occupy the field of the process by which municipal land use and development laws are finally approved or disapproved." *Id.* at 349.

Although *Nordmarken* discussed numerous MPA provisions and considered whether a provision of a city's charter was preempted, that is where the similarities end. The issue in *Nordmarken* concerned amending and approving comprehensive land use plans, and the opinion did not address procedures for variances. *See id.* at 347

(acknowledging that the MPA gives municipalities general zoning authority); *see also id.* at 348 (“The subject matter at issue . . . is the process by which municipalities adopt and finally approve ordinances pertaining to land use planning and zoning.”). And while the *Nordmarken* opinion briefly referenced the section of the MPA that authorizes municipalities to establish a board and to give the board certain powers, *id.* at 350, it was specifically discussing how the MPA and the MLPA preempt provisions in city charters and ordinances that attempt “to control the process by which final approval of a plan or zoning is obtained” via the right to petition by referendum. *Id.* We read *Nordmarken* to apply to that limited circumstance. Murphy’s preemption argument differs from the reasoning in *Nordmarken* because the issue here involves a municipality’s power to enact ordinances using an express provision of the MPA itself—namely, Minn. Stat. § 462.354, subd. 1. In this way, the city zoning code’s concurrent-review provision is an outgrowth of the “single body of law” containing both the “necessary powers” and “uniform procedure” that the *Nordmarken* opinion determined cities cannot undercut via referendum. *Id.* at 347 (quoting the MPA’s policy statement in Minn. Stat. § 462.351 (2000)). Because *Nordmarken* does not support Murphy’s conflict-preemption argument, we do not find this comparison persuasive.¹¹

¹¹ Murphy also argues that a district court order from another case supports his argument that the MPA requires the board to have exclusive jurisdiction over applications for variances. This argument fails for two reasons. First, the cited disposition hinged wholly on the city’s violation of its municipal land use procedures rather than a state law. Second, district court orders do not control our de novo review of questions of law. *See Bicking*, 891 N.W.2d at 312.

We therefore hold that the MPA authorizes municipalities to provide concurrent authority to planning agencies pursuant to section 462.354, subdivision 1, and boards of adjustments and appeals pursuant to section 462.354, subdivision 2, to hear and decide requests for variances.

II. The amendments to the city’s zoning code rendered the reverse-corner-lot variance void.

At the time Murphy filed his appeal, he was challenging whether the city had a reasonable basis to grant the reverse-corner-lot variance for the front-yard-setback requirement; however, subsequent amendments to the city’s zoning code caused this court to request supplemental briefing from the parties as to their impact on Murphy’s appeal. Murphy contends that the amendments do not affect the analysis of the issues presented, while respondents argue that the amendments render any challenges to the reverse-corner-lot variance nonjusticiable. We agree with respondents.

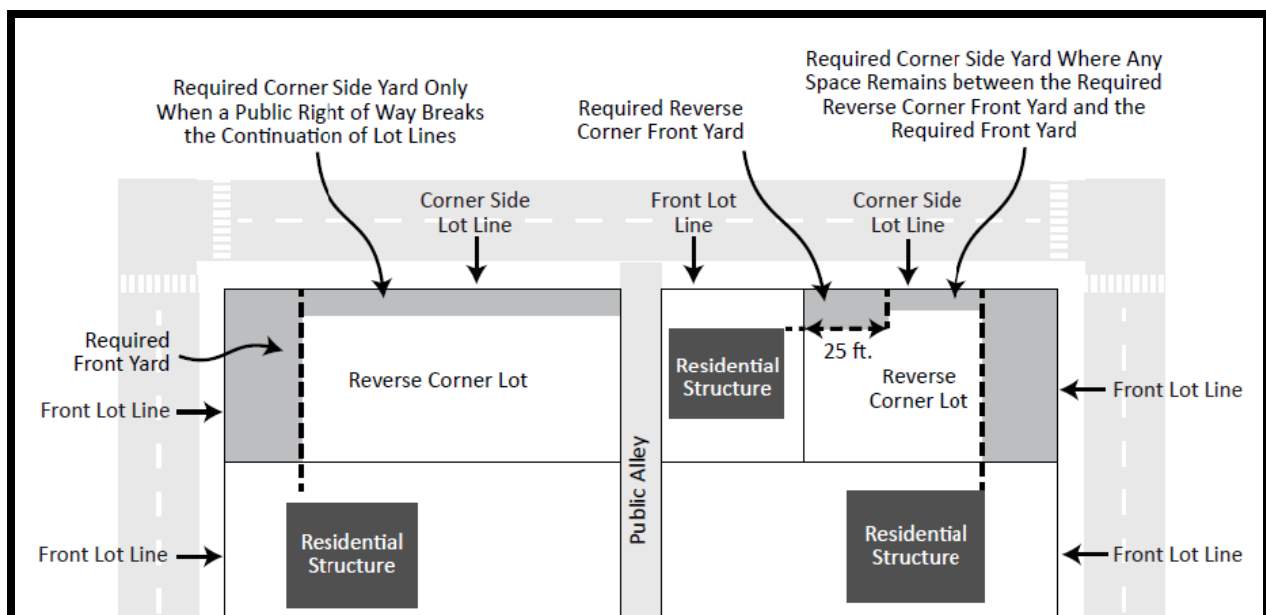
Recall that the project site was subject to reverse-corner-lot setback requirements because its corner side yard runs along West 50th Street and it is adjacent to lot 3409, which fronts West 50th Street. There is, however, an alley between lot 3409 and the project site as shown in the illustration of the project site and lot 3409, *supra*. Because an alley separates lot 3409 and the project site, we must determine whether two amendments to the city’s zoning code render the developer’s reverse-corner-lot variance void.

The first amendment relevant to our analysis was enacted in 2023 to MCO § 540.830, and it provides that “[r]everse corner front yard setbacks shall not be applied when crossing an alley or other public right-of-way.” Minneapolis, Minn., Ordinance

No. 2023-032.¹² The amendment went into effect on July 1, 2023. *Id.* The second amendment was enacted in 2024 to MCO § 520.40(b), and it provides that “[a]ny zoning approval . . . that becomes unnecessary through the adoption of less restrictive regulations is void, and the building or use is no longer subject to the former regulations.” *Id.* The amendment expressly allows land use applicants to “avail themselves of less restrictive requirements provided by the zoning regulations in effect on July 1, 2023, or later.” *Id.*

In his supplemental brief, Murphy argues that the amendments cannot apply to the reverse-corner-lot variance because the developer was not an “applicant” after July 1, 2023. Respondents argue that the plain language of the amendments means that they apply here; thus, the reverse-corner-lot setback variance became unnecessary through the

¹² The diagram below is taken from a related provision of the city’s zoning code to illustrate reverse-corner lots after the 2023 amendments. MCO § 540.830 fig.540-1.



adoption of less restrictive requirements in MCO § 540.830 and the reverse-corner-lot setback variance is void.

“The interpretation of an existing ordinance is a question of law for the court. We review a question of law de novo.” *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015) (quotation omitted). “The rules governing statutory interpretation are applicable to the interpretation of city ordinances.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 192-93 (Minn. App. 2010). “The object of all statutory interpretation is to ascertain and effectuate” the legislative body’s intent, and if the ordinance is unambiguous, “we interpret it according to the plain meaning of its text.” *Pfoser v. Harpstead*, 939 N.W.2d 298, 310 (Minn. App. 2020) (quotation omitted), *aff’d*, 953 N.W.2d 507 (Minn. 2021); *see* Minn. Stat. § 645.16 (2024) (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”). “The specific meaning of a word depends on how it is being used in context.” *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022) (quotation omitted). A court’s interpretation of a statute must give effect to all of its provisions whenever possible. Minn. Stat. § 645.16; *Pfoser*, 939 N.W.2d at 310.

Murphy does not contend that the amendments are ambiguous; instead, he focuses on the portion of the amendment that provides that “[a]n applicant may avail themselves of less restrictive requirements provided by the zoning regulations in effect on July 1, 2023,” MCO § 520.40(b), to argue that, because the city granted the variances in January 2023—the city’s final ratification occurred on January 12, 2023—the developer was no longer “an applicant” under the city’s zoning code in July 2023. However, Murphy ignores

the following sentence: “Any zoning approval granted by the city planning commission, board of adjustment or city council that becomes unnecessary through the adoption of less restrictive regulations is void, and the building or use is no longer subject to the former regulations.” *Id.* Reading the provisions of the 2024 amendment as a whole, we conclude that the city intended to void its approvals of zoning requests that had become unnecessary as a result of the adoption of less restrictive regulations.

We apply the plain language of the 2024 amendment here. It is undisputed that the developer presently has a zoning approval—a reverse-corner-lot variance—granted by the planning commission. It is also undisputed that there is a public alley between the project site and lot 3409. Pursuant to the 2023 amendments to MCO § 540.830, “[r]everse corner front yard setbacks shall not be applied when crossing an alley or other public right-of-way.” Thus, the amendment to section 540.830 is a less restrictive regulation that operates to render the reverse-corner-lot variance unnecessary, and MCO § 520.40(b) mandates that the variance is now void.

Because the reverse-corner-lot variance is void by operation of the city’s zoning code, the reasonableness of the city’s actions in granting the variance is a nonjusticiable issue that we do not reach.

III. The city had a reasonable basis to grant the rear-yard variance.

Murphy next argues that the city lacked a reasonable basis to grant the rear-yard variance, asserting that the developer merely chose a design that did not comply with the city’s zoning code. Although Murphy conceded that the slope of the project site constitutes a circumstance unique to the project site, he argues that circumstance—the slope—did not

create any challenge to the project's compliance with the city's zoning code. Respondents argue that the city had a reasonable basis to grant the rear-yard variance because the project site's slope along its alley makes it difficult to construct the proposed project while maintaining other established yards.

Appellate courts review a local government's zoning decision "independent of the findings and conclusions of the district court." *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). "The setting aside of routine municipal decisions should be reserved for those rare instances in which the City's decision has no rational basis. Except in such cases, it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). "The fact that a court reviewing the action of a municipal body may have arrived at a different conclusion . . . does not invalidate the judgment of the city officials if they acted in good faith and within the broad discretion accorded them by statutes and the relevant ordinances." *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983).

The supreme court clarified the various articulations of our review, often called "rational-basis review," in *Honn v. City of Coon Rapids*: "the standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable."¹³ 313 N.W.2d 409, 416-17 (Minn. 1981). Thus, parties challenging a municipality's grant of

¹³ Murphy incorrectly argues that we must "view the evidence in the light most favorable to the party against whom judgment was granted."

a variance must “show that the grant was *unreasonable*.” *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 492 (Minn. App. 1995) (emphasis added).

To determine whether a municipal body’s action was reasonable, we apply a two-step analysis: first, we determine whether the city supported its action with legally sufficient reasons, and second, we determine whether those reasons have a factual basis in the record. *RDNT, LLC*, 861 N.W.2d at 75. We must affirm a city’s decision if at least one of the reasons for its decision is legally sufficient and supported by evidence in the record. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989).

The city’s zoning code sets forth the requirements for the city to grant a variance:

A variance may be granted from the regulations of the zoning code only when the applicable board, commission, or council makes each of the following findings based upon the evidence presented to it in each specific case:

(1) Challenges exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.

(2) The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.

(3) The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety,

or welfare of the general public or of those utilizing the property or nearby properties.

MCO § 525.460(c).¹⁴

Thus, to approve a variance application, the city must make the findings required by section 525.460(c) of the city's zoning code based on evidence in the record. Applying the relevant analytical framework to the city zoning code's requirements for granting a variance, we consider first whether the city provided legally sufficient reasons for its grant of the variance, then we consider whether there are facts in the record to support that decision.

The city determined that the developer proposed to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan. It specifically acknowledged that the proposal included sufficient parking to accommodate the residential portion of the project and observed that the intent

¹⁴ The MPA mirrors the city zoning code's language:

Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by 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 do not constitute practical difficulties.

Minn. Stat. § 462.357, subd. 6(2).

of rear-yard setback requirements “is to maintain access to light and air for adjacent properties, provide adequate separation between uses and to encourage orderly development.” The city noted that, for this project, the rear-yard variance request “concerns only the first level of the property structure which contains the enclosed parking structure. The remainder of the structure above the first floor is setback at least nine feet in compliance with the minimum setback requirements in the Corridor 4 district.” The city also determined that the project was in keeping with the spirit and intent of the goods and services corridor and the 2040 Plan. It reasoned that, even with this variance, the project will meet the general area’s setback requirements and that the developer proposed a design that minimizes the impact of the building’s increased height with an architectural character that complements the existing development.

As to the essential character of the locality, the city determined that “[t]he proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity” because the project “is designed to complement the existing development patterns[] and architectural character” of the neighborhood. The city also reasoned that the building “utilizes setbacks and other architectural strategies to minimize the impact of the increased building height and bulk on adjacent lower scale uses.” Finally, the city determined that the project site’s slope presented a challenge in complying with the zoning code because the slope is a unique circumstance of the property that was not caused by the developer. The city determined that the slope created a need for extra space in the project site’s rear yard to enable the construction of parking spaces “while maintaining established yards in the front of the building.” The city’s decision refutes

Murphy’s argument that the developer simply had no “desire” to comply with the city’s zoning code. The decision shows that the project was designed to consider the purpose of the city’s zoning code and to minimally deviate from its requirements due to a unique physical feature of the property. The city set forth legally sufficient reasons to grant a variance consistent with the city’s zoning code.

We now examine whether the city had a factual basis to grant the variance. A review of the record demonstrates that the project includes parking for the residential portion of the building at a 1:1 ratio; that, even with the proposed five-foot rear setback variance, the “remainder of the structure above the first floor is setback at least nine feet”; and that the project site slopes from north to south along the alley. The record also shows that the developer did not cause the slope of the natural landscape. The record contains facts that support the city’s legally sufficient reasons for granting the rear-yard variance for a five-foot rear-yard setback instead of a nine-foot rear-yard setback.

Because the city provided legally sufficient reasons based on facts in the record to support the findings required by the city’s zoning code, its decision to grant the rear-yard variance was reasonable. Accordingly, we affirm the city’s grant of the rear-yard variance.

In its effort to abide by the variance requirements of section 525.460(c) of the city’s zoning code, consistent with the policies, goals, standards, and maps that guide the city’s physical, social, and economic development, the planning commission determined that the rear-yard variance should be granted. As the supreme court stated in *White Bear Docking*, the “setting aside of routine municipal decisions should be reserved for those rare instances in which the City’s decision has no rational basis. Except in such cases, it is the duty of

the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.” 324 N.W.2d at 176. This is not one of those rare instances, and we conclude that, here, the city acted within its broad discretion when it decided to grant the variance.

DECISION

We hold that the MPA authorizes the city to provide concurrent authority to its planning commission and its board of adjustments and appeals to hear and decide requests for variances. The city’s planning commission thus had the authority to grant variances from the zoning code. Although we do not review the city’s grant of the reverse-corner-lot variance because it is void by operation of city ordinance and thus the issue is nonjusticiable, we conclude that the city had a reasonable basis for granting the rear-yard variance.

Affirmed.