

# Non-Use Variance Checklist

## Description:

A zoning ordinance is inherently rigid. One mechanism for flexibility in zoning is the variance. A variance is the authority to depart from the literal application of the zoning ordinance because of a Practical Difficulty (in the case of a non-use or dimensional variance) resulting from the physical characteristics of the land.

## Review Team:

Zoning Board of Appeals, City Planner

## Deadline and Meeting Requirement:

Must be submitted to the Building and Planning Department at least one month prior to the next Zoning Board of Appeals meeting. The applicant or a representative must attend the meeting.

## Submission Requirements:

Findings must be provided for all standards listed in the checklists on the following page. A standard can be found not applicable, but no standard can conflict with another standard.

1. A complete signed application and paid fee;
2. A complete checklist (see next page);
3. Short answers addressing each standard in the checklist and how the project meets the criteria; and
4. A sketch plan illustrating the project and variance request.

Practical Difficulty Standards	Applicant's Response
<p><b>The variance request is due to unique circumstances of property.</b></p> <p>Examples of unique circumstances include properties with odd dimensions or unusual easements. Unique circumstances do not include business, family or financial reasons.</p>	
<p><b>The variance request is due to unique circumstances of property and is not shared by neighboring properties in the same zone.</b></p> <p>If the circumstances for which a variance is warranted are shared among numerous properties in the same zone, then the variance request should be denied. It may be better to consider amending the zoning ordinance. For instance, a historic portion of a community developed around the turn of the 20<sup>th</sup> Century might have 50-foot lots throughout a neighborhood of single-family homes. If this neighborhood is subject to the same zoning standards as neighborhoods developed later with 70-foot-wide lots, projects not requiring a dimensional variance in the newer neighborhood will most likely require a variance in the historic neighborhood. The proper solution is to create a new zoning district for the historic neighborhood that is more reflective of the existing character.</p>	
<p><b>The problem is not self-created, either by the applicant or an applicant's predecessor.</b></p> <p>The proper interpretation is to ask whether the applicant took some affirmative action that created the need for the variance, such as making an unusual land division (shape), filling the entire building envelope so that a porch must necessarily extend into the setback area, digging a pond, etc. A practical difficulty cannot be self-created (<i>Norman Corp v. City of East Tawas</i>, 263 Mich App 194 (2004)). Being "self-created" includes actions of the current property owner and actions of all previous owners.</p> <p>At the same time, the Court of Appeals recognizes that merely purchasing property with the knowledge of ordinance limitations does not preclude someone from apply for (and receiving) a variance (<i>City of Detroit v. City of Detroit BZA</i>, 326 Mich App 248 (2018)). The key is whether a property owner — present or past, took affirmative action to alter the property counter to the controlling ordinance at the time. The purchase of a unique lot, even with knowledge of the current ordinance, should not be held against a new owner. This standard is inappropriately applied if a ZBA member sees the presence of the applicant before the ZBA as a self-created situation. This mindset would lead to the conclusion that all variance requests are self-created. It is not an applicant's desire for a variance that is a self-created problem; it is an applicant's previous action to fill the buildable envelope with structures, or divide the parcel into an unusual shape that is the self-created problem.</p>	

Practical Difficulty Standards	Applicant's Response
<p><b>Strict compliance with area, setbacks, frontage, height, bulk, or density would unreasonably prevent the landowner from using the property for a permitted purpose and would thereby render the conformity unnecessarily burdensome for other than financial reasons.</b></p> <p>Figure out if there is a way to accomplish the same purpose without a variance even if it will be more inconvenient or more expensive for the applicant. For example, if the design for an addition proposed by the applicant can be changed such that a variance is no longer needed, the variance request should be denied. A variance is granted for circumstances unique to the property (e.g. odd shape), not those unique to the property owner (e.g. large family).</p>	
<p><b>The variance would provide substantial justice to the applicant, as well as to other property owners in the district. A reduced relaxation would give substantial relief and be more consistent with property design and rights in the neighborhood.</b></p> <p>There are valid health and safety reasons for zoning setbacks, but when these regulations treat an applicant unfairly in relation to unique aspects of the land they should be relaxed. For example, if all property owners in a neighborhood enjoy a front porch, yet the applicant is not able to construct a front porch because of their property's unique circumstance (e.g. setbacks and unusual easement), then a variance should be granted. This is because strict compliance of the zoning ordinance would prevent the applicant from using the property for a permitted use: a front porch.</p>	
<p><b>No lesser variance options are practical.</b></p> <p>If a lesser variance than requested would provide substantial justice to the property owner, the lesser variance should be considered. For example, if the request is to encroach into the setback by 4 feet, but a 2-foot encroachment would allow the owner to use their property for the permitted use then the appeals board must not approve a greater variance than minimally necessary. Another example, if the property owner wants to enjoy the right to own a garage, but would like a four car garage, it may be reasonable for the ZBA to allow a variance for a one car garage.</p>	

Health, Safety and Welfare Standards	Applicant's Response
<b>Zoning Ordinance and Master Plan.</b> The variance will not adversely affect the purpose of the Zoning Ordinance or the Master Plan.	
<b>Adjacent Property and Surrounding Neighborhood.</b> The variance will not be of substantial detriment to the adjacent property, will not alter the essential character of the neighborhood and will not diminish or impair established property values within the surrounding area.	
<b>Community of Eastpointe.</b> The variance will not impair the public health, safety, comfort, morals, or welfare of the community.	
<b>Nuisances.</b> The variance will not create a nuisance such as light, air, sound and odor pollution, traffic congestion, or fire and flood damage.	