

**Melrose Township
ZONING BOARD OF APPEALS
VARIANCE GUIDELINES**

- **VARIANCE = License to break the law**

It is permission that is not intended to be easy to achieve. Variances granted without proper justification may lead to an ordinance that becomes unenforceable.

- **Nonuse Variances are generally referred to as dimensional variances**

Regulations subject to nonuse variance requests include:

- ❖ Front, side, or rear yard setback regulations
- ❖ Height regulations
- ❖ Parking and vehicular access regulations
- ❖ Sign regulations
- ❖ Landscaping or buffering restrictions
- ❖ Lot coverage or bulk restrictions

The ZBA is authorized to grant nonuse variances ONLY when strict enforcement of the ordinance would cause *practical difficulties* for the property owner due to circumstances *unique* to the property. Self-imposed difficulties should not be considered.

Should be kept as small as possible

May contain conditions

- **Uniqueness typically refers to:**

- ❖ Irregular lot shape
- ❖ Small size parcels
- ❖ Non-conforming lot
- ❖ Special physical conditions such as wetlands or other water bodies, valuable trees, bedrock, threatened or endangered plant species, steep slopes, etc.

- **Standard for considering nonuse variances**

The Michigan Courts have applied standards when considering nonuse variance which require the applicant to demonstrate a *practical difficulty* unique to the property (and not the applicant) in order to qualify. In order to grant a variance, **all** the standards must be met.

- ❖ *Would strict compliance with the restrictions governing area, setbacks, frontage, height, bulk or density unreasonably prevent the owner from using the property for a permitted purpose, or would strict compliance render conformity with such restrictions unnecessarily burdensome?*

This test requires the applicant to demonstrate that existing dimensional regulations place unreasonable limitations on use of the property, or that the regulations are unreasonably restrictive. When applying this test, the ZBA should have the applicant demonstrate that alternative building or siting designs were considered, but eliminated for valid reasons. Language should be incorporated in the variance application

indicating that reasonable alternatives need to be considered as a means of avoiding a variance.

- ❖ *Would the granting of a variance do substantial justice to the applicant as well as other property owners in the district, or would a lesser relaxation of the standards than that applied for give substantial relief to the owner of the property and be more consistent with justice to other property owners?*

Assuming conditions are essentially the same among neighborhood properties and that those properties have been developed without variances, the ZBA should not extend, by granting a variance, a right or privilege not made available to others. Additionally, the ZBA must consider the impact the variance will have on neighboring properties. Lastly, consider if it is necessary to authorize the full variance as requested. Perhaps, assuming a variance is warranted, a reduced variance would suffice.

With respect to a reduced variance, the ZBA should proceed with caution. First, a determination must be made as to whether a variance is even warranted. If so, then a determination of the magnitude of the variance may be made.

- ❖ *Is the plight of the owner due to unique circumstances of the property and not to general conditions in the area?*

Is there something different about the property, when compared to other properties in the neighborhood that unreasonably restricts its use under the dimensional standards of the ordinance?

Under this test, the applicant must demonstrate that their property possesses physical or other unique characteristics, not generally associated with surrounding properties, rendering development of the property impossible or unnecessarily burdensome under present dimensional standards.

- ❖ *Is the problem self-created?*

Did the applicant or property owner create the problem necessitating a need for the variance? If so, then no variance is warranted. For example, if the owner originally had a larger parcel and divided a portion, thereby reducing its size and limiting placement of the use he now desires, then the problem was self-created.

The issue of self-creation may be difficult to measure for the ZBA. In most all cases, an applicant will either deny self-creation or plead ignorance to causing the situation at hand.

- **Remember, when considering nonuse variances, the ZBA must insure that the “spirit of the ordinance is observed, public safety secured and substantial justice done.”**