

GUIDELINES FOR APPELLANTS TO ZONING BOARD OF APPEALS

When a board of appeals considers a variance request, it is important that they keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting a particular property. It is not designed as a technique to grant special favors to some persons or as a tool to solve a problem shared in common with other properties. When a problem is common, the appropriate solution is amendment of the text of the ordinance so all similarly situated property owners are treated equally. Often people will claim that a variance will allow them to make more money from the property. However, this is not a legitimate argument, since zoning is not intended to be used merely to permit the most profitable use of land, although reasonable use of property must be permitted.

CHECKLIST TO GUIDE DECISIONS ON DIMENSIONAL VARIANCES

The most common appeals deal with requests for a variance from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations.

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the board of appeals has the power to grant dimensional variances. Typically, the following circumstances must exist:

1. Dimensional zoning requirements cannot be met on an existing lot due to narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as wetland, flood plain, bedrock condition, etc.) Inhibit the lawful location of a principal or accessory structure (such as septic system, garage, shed).
2. The problem creates a practical difficulty which is unique (because of the above or similar reasons) and is not shared by neighboring properties in the same zone. If the board of appeals finds that the problem is not unique, but common, amending the ordinance or a rezoning should be pursued.
3. The practical difficulty was not created by an action of the applicant and either existed at the time of adoption of the requirement from which the variance is requested, or is necessary as the result of governmental action (such as road widening). A self-created hardship is not typically a valid basis for a variance.
4. The appellant presents information usually showing that the requested variance:
 - a) Will not be contrary with the intent and purpose of the zoning ordinance;
 - b) Will not cause a substantially adverse affect upon adjacent properties;
 - c) Will relate only to the property under control of the appellant;
 - d) Will not essentially alter the character of the surrounding area;
 - e) Will not increase the hazard from fire, flood or similar dangers; and
 - f) Will not increase traffic congestion.
5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zoning district.

The Michigan Court of Appeals has applied similar principles (widely recognized in many state courts) in recent variance cases:

1. To obtain a dimensional variance, the applicant must show "*practical difficulty*" by demonstrating:
 - a) Whether strict compliance with area, setbacks, frontage, height, bulk or density would *unreasonably prevent* the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
 - b) Whether a variance would do *substantial justice* to the applicant as well as to other property owners in the district, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others;
 - c) Whether the plight of the owner is due to *unique circumstances* of the property;
 - d) Whether the problem is self-created.
2. The ZBA must insure that the "*spirit of the ordinance is observed, public safety secured and substantial justice done*".

Note: Typically this means if D. is true, the decision is NO. If D. is false, and B. and C. are true, decision is probably YES (in this case, A. is probably also true). If applicant only meets A. and the problem is not self-created (D.), the decision is NO.

NOTICE OF APPEAL.

TO: The Onokama Township Zoning Board of Appeals.

FROM: _____
Name of Applicant _____

Address of Applicant _____

Telephone (home and business) _____

FOR OFFICE USE ONLY:	
Case number	_____
Date rec'd	_____
Fee rec'd	_____
Receipt number	_____
Hearing date	_____
Appeals Board:	_____
Action	_____
Date	_____
Expiration Date	_____
(attach inspection sheet)	

APPLICANT'S CAPACITY IF NOT PROPERTY OWNER: (circle one)

Builder Have option to purchase other

PLEASE NOTE: All questions must be answered completely. If additional space is needed, number and attach additional sheets. The total number of attached sheets is _____.

I. ACTION REQUESTED:

I, (we) the undersigned request a hearing before the Onokama Township Zoning Board of Appeals for the purpose of indicated below: (Check one only)

- _____ 1. Ordinance or Map Interpretation.
- _____ 2. Variance.
- _____ 3. Appeal from an administrative decision.
- _____ 4. Other authorized review.

II PROPERTY INFORMATION:

A. Legal description of property affected by this appeal:

Parcel Size: _____ Section No. _____
Parcel Id. (tax number) 51-11- - -
Address of property: _____

- B. List all deed restrictions (attach additional sheets if necessary) _____

- C. Names and addresses of all other persons, firms or corporations having a legal or equitable interest in the land. _____

- D. This area is (check one) _____ unplatted, _____ platted, _____ will be platted. If platted (name) _____
- E. Attach a copy of the application for land use permit and all other information required by Article VI. Section 1 of the Onokama Township Permanent Zoning Ordinance, as amended.
- F. Present use of the property is _____

- G. Present Land Use District classification of the property is _____
- H. A previous appeal (choose one) has/has not been made with respect to these premises in the last three years. If a previous appeal, rezoning or special use permit application was made, state the date, nature of action requested and the decision:

111. DETAILED REQUEST AND JUSTIFICATION:

(Fill in one section only, corresponding to the request made in Section I above)

A. Interpretation of Zoning Ordinance Map

1. The appellant respectfully request the Board of Appeals make an interpretation of:

_____ (a) the location of Land Use District boundaries on the Onokama Township Zoning Map as applied to the property described in this application.

_____ (b) the provisions of Article ____ Section ____ of the Onokama Township Zoning Ordinance.

_____ (c) Other, specify _____

2. Please describe in detail the nature of the problem to be interpreted and the reason for the request.

B. Variance from the requirements of the Zoning Ordinance.

The appellant respectfully requests the Board of Appeals grant a variance on the above described property.

1. Indicated below are the ordinance requirements which are the subject of the variance request.

<input type="checkbox"/> setback	<input type="checkbox"/> sideyard	<input type="checkbox"/> offstreet parking
<input type="checkbox"/> lot coverage	<input type="checkbox"/> placement	<input type="checkbox"/> height
<input type="checkbox"/> signs	<input type="checkbox"/> area required	<input type="checkbox"/> other (specify)

2. State exactly what is intended to be done on or with the property which necessitates a variance from the Zoning Ordinance.

3. Describe the characteristics of your property which require the granting of a variance (include dimensional information)

<input type="checkbox"/> too narrow	<input type="checkbox"/> elevation	<input type="checkbox"/> soil
<input type="checkbox"/> too small	<input type="checkbox"/> slope	<input type="checkbox"/> subsurface
<input type="checkbox"/> too shallow	<input type="checkbox"/> shape	<input type="checkbox"/> other

4. Justification for granting the required variance .
The appellant must show that strict application of the Zoning Ordinance to his property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the ordinance. In order for the Board of Appeals to determine whether unnecessary hardship exists, the appellant should provide answers to each of the following questions:

- a. Can the property in question be used in a manner permitted by the Zoning Ordinance if a variance is

not granted? ☐ yes ☐ no.

If no, what unnecessary hardship will result if the variance is not granted? _____

- b. To the best of your knowledge, can you affirm that the hardship described above was not created by an action of anyone having property interests in the land after the Zoning Ordinance or applicable part thereof became law? ☐ yes ☐ no.

If no, explain why the hardship should not be regarded as self-imposed (self-imposed hardships are not entitled to variances) _____

- c. Are the conditions on your property the result of other man made changes (such as the relocation of a road or highway)? ☐ yes ☐ no.

If yes, explain how _____

- d. Will strict application of the terms of the Ordinance deny use of the property for any purpose to which it is reasonably adapted? ☐ yes ☐ no.

If yes, explain how _____

- e. Is the variance applied for due to unique circumstances present on your property or to general conditions in the area? ☐ yes ☐ no.

If yes, explain any peculiar or unique conditions, and how many other properties in your area are similarly affected _____

- f. Would granting the variance change the essential character of the area? ☐ yes ☐ no.

If yes. how? _____

- g. Would granting the variance be contrary to the intent and purpose of the Zoning Ordinance? ☐ yes ☐ no.

If yes, explain _____

h. Other comments in support of the application _____

C. ADMINISTRATIVE DECISION:

The zoning administrator has ruled under Article _____
Section _____ of the Onokama Township Zoning Ordinance that

D. APPEAL FROM ADMINISTRATIVE DECISION:

The appellant respectfully requests the Board of Appeals to (choose one) reverse/modify the Zoning Administrator's decision (copy attached) on application No _____ dated _____. It is alleged that the Zoning Administrator erred in the interpretation of Article _____ Section _____; his order, requirement, decision, or determination regarding the issuance of a Land Use Permit; or otherwise by (specify)

and that reversal/modification of said decision should be granted because _____

specify decision sought _____

E. OTHER AUTHORIZED REVIEWS:

The appellant respectfully petitions the Board of Appeals to grant the following _____ specify according to the provisions of the local ordinance. Special Use Permit, temporary permits, change in non-conforming use status, other, _____

_____ according to the conditions and provisions of Article _____ Section _____ granting that authority to the Board of Appeals. Specifically state the problem (the proposed use of the property), decision sought, and justification for the request. _____

IV. IMPACT ON SURROUNDING LANDS:

If your request is granted:

- A. What are likely to be the positive and negative impacts of the surrounding land and neighbors? _____

- B. How do you propose to minimize any potential negative impacts which your proposed activity may cause? _____

V. AFFIDAVIT:

The undersigned acknowledges that if a variance is granted or other decision favorable to the undersigned is rendered upon this appeal, the said decision does not relieve the applicant from compliance with all other provisions of the Onekama Township Zoning Ordinance; the undersigned further affirms that he/she or they is (are) the _____ (specify owner, lessee, or other type of interest such as authorized agent for the owner) involved in the appeal and that the answers and statements herein contained and the information herewith submitted are in all respects true and correct to the best of his, or her knowledge and belief.

Applicant(s) Signature(s)

Date: / /