



ONE PAGER PLUS

Dimensional (Non-Use) Variances

How to Apply for a Variance

1. Read through this document to familiarize oneself with the definition and requirements associated with a dimensional/non-use variance application.
2. Contact the Planning and Zoning Division at 269-966-3320 to discuss the existing condition of the property and the reasoning behind the variance application. Staff will provide realistic feedback on if they will be able to support the application or not. **Staff support of a variance application does not speak to the decision of the Zoning Board of Appeals nor the final outcome of the application.**
3. On the [Applications and Petitions](#) page of the City of Battle Creek's website, download and complete the Variance Request Packet.
4. Click the "[Online Application for a Variance Request](#)" link to navigate to the online variance request application.
5. Visit the Applications and Permits webpage and click on the link for [BS&A Online](#) in the first paragraph. When the page opens, select "Apply for a Planning, Zoning, or Engineering Process".
6. If this is the first time applying for a planning/zoning process, create a BS&A online account
7. Search for the address of the project by number and street name.
8. Click the correct line for the address of the project.
9. Follow the prompts, then submit when done.
10. A link will be sent to the email entered during the application process when the web request is processed by City staff.

What is needed to apply for a Variance?

- Address of the property for which the variance is being requested.

Note: You may contact the Planning and Zoning Division to obtain an aerial view of the subject lot to assist in showing the property and visually demonstrating the effect of the variance.

What is a Variance?

Variances are requests to deviate from the development standards presented in the current zoning ordinance for a given zoning district. A dimensional/non-use variance is considered when there are practical difficulties present relating to construction, structural changes, or the alterations of buildings/structures relating to the dimensional requirements of the zoning ordinance. Variances are granted by the Zoning Board of Appeals, but they are also reviewed by planning staff.

When applying for a variance, the applicant should be prepared to show how the property meets the following five conditions, both through their application and through any supplementary material they provide alongside the application:

- The property cannot be put to a reasonable use without the variance.

- The difficulty must be unique to the property and not generally shared by others in the same zoning district.
- There must be no reasonable, legal alternative that would accomplish the intended purpose.
- The difficulty is not self-created.
- The variance will not adversely affect the public health, safety, and welfare.

What is “practical difficulty”?

When applying for a variance, it is the responsibility of the property owner/applicant to prove that “practical difficulty” exists when they follow the zoning ordinance as written. Practical difficulty must be substantially more than a “mere inconvenience” or a “mere inability to attain a higher financial return” ([1280.03\(d.3.A.1\)](#)). In other words, the challenge faced by the applicant must be beyond desiring a higher home value or a difficulty due to already having purchased building materials. **Proving the existence of practical difficulty for a variance is the responsibility of the property owner/applicant.**

Practical difficulty in the State of Michigan has been defined through case law as the collective result of four criteria. All four of the following criteria must be met in order for practical difficulty to exist.

1. Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use or would render conformity unnecessarily burdensome.
2. The particular request, or a lesser relaxation of the ordinance standard, would provide substantial justice of the landowner and neighbors.
3. The plight is due to unique circumstances of the property and is not shared by neighboring properties in the same zone.
4. The problem is not self-created.

What are the standards for granting a dimensional variance?

These standards are what guides consideration of if a dimensional/non-use variance can be granted.

1. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this Zoning Code (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.
2. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this Zoning Code by simple relocating or redesigning the structure(s), then a variance shall not be granted.
3. A variance shall not be granted when it will alter or conflict with the intent of this Zoning Code considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of this variance.
4. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

What is a self-imposed or self-created difficulty?

A difficulty is considered “self-imposed” when the applicant or a previous owner of the property made a choice when building or altering the property that limits the ability of the property to be used within the

requirements of the zoning ordinance. When a property is purchased, the new owner inherits the building choices and actions of the previous owners. Unusual parcel divisions and a previous action to fill the buildable area of the lot are considered as “self-imposed”, since action was taken by an owner of the property at some point to create the current situation. These are not the only circumstance that count as self-created hardship, nor do they automatically bar a variance appeal from being heard.

Questions?

Please read [Section 1280.03\(c.3.A\)](#) for the dimensional variance standards. For other questions, please contact the Planning and Zoning Division directly at 269-966-3320.

