

SOUTH HAVEN TOWNSHIP
VAN BUREN COUNTY, MICHIGAN

INFORMATION & CHECK LIST
for use by the
ZONING BOARD OF APPEALS
when reviewing
ZONING APPEAL CASES

ZBA RESPONSIBILITIES

1. The primary purpose of the ZBA is to help make land usable within the intent and purpose of the provisions of a Zoning Ordinance through interpretation and the granting of dimensional or use variances.
2. Definitions of terms:
 - a. "Interpretation" - refers to the ZBA's role in defining and explaining any and all provisions contained in a Zoning Ordinance text or on a Zoning District Map, which are perceived not be self-definable or self-explanatory.
 - b. "Practical Difficulties" - refers to appeals requesting the ZBA to grant variances of such things as height, area, placement regulations among other dimensional or quantitative provisions in a Zoning Ordinance due to natural conditions, existing development, legal nonconformance, shape of lot, etc.
 - c. "Unnecessary Hardship" - the granting of use variances from permitted principal and accessory uses, (combinations of uses defining or interpreting what is a principal and an accessory use, etc.) but not including the granting of use variances which in effect amend the Zoning Ordinances with an unlisted or a use not specifically permitted in a Zoning District which an appeal is located.
 - d. "Vested Property Right or Interest Rule"

The rule which allows the use of lots or parcels of record and the continuation of nonconforming uses as well as conforming uses described as the "vested right or interest rule" in relation to the zoning of property.

P.A. 184 of 1943, "The Township Rural Zoning Act" states very clearly that zoning cannot be retroactive, and further that legal uses of land existing prior to the enactment of any Zoning Ordinance or amendment to it have every right to continue exactly as they existed at the time of any zoning change. The ZBA, therefore, may find itself involved in granting variances for nonconforming uses and lots and parcels of record existing at the time of zoning enactment or amendment, and must give factual consideration to the vested right or interest in property rule.
3. Checklist to Guide Decisions of the ZBA in the granting of variances:
 - a. The requested variance is not a result of an action taken by an applicant to specifically create the conditions leading to the request.
 - b. The requested appeal will not be contrary to the intent and purpose of the Zoning Ordinance.

- c. The requested variance will overcome adversity created by the Zoning Ordinance to the extent that the property cannot be used for any useful purpose.
- d. The requested variance will overcome the possibility of economic considerations to the extent that confiscation of the property will not result, but, if the variance is requested to simply make its use more valuable, the variance has no standing if it is found that this is the only reason the variance is requested.
- e. The requested variance, if granted, is based primarily on the fact that the property in question is unique or different from all other properties in the same Zoning District as to find it necessary to grant the variance in order to give the unique property the same privileges to use as that which is enjoyed by all other properties in the same District.
- f. The requested variance, if granted, will not create a precedent which can be applied generally to other properties in the same District, so as to establish through the precedent, what in effect could become and should be legislative action to amend the Zoning Ordinance rather than to create the possibility of granting variances over and over again for the same reason.
- g. The request, if granted, will not cause a substantial adverse effect upon adjacent properties in the District or the Zoning District itself in a more general way.
- h. The requested variance is applicable to only the property under the ownership-control of the applicant.
- i. The requested variance will not alter the essential character of the Zoning District in which it is located as to either dimensional requirements or permitted uses.
- j. The requested variance will not create a hazard to the public health, safety and general welfare of the persons in the zoning District and the Township generally.
- k. The requested variance will not produce nuisance conditions to the occupants of adjacent properties and the surrounding area in terms of the emission of noise, odor, dust, smoke, vibration, glare, heat or inconsistent or untimely activity in relation to that normally associated with the permitted use activities in the District.
- l. The requested variance will not add substantially more to the generation of traffic than that which is generated by other permitted uses in the District.
- m. That the requested variance, if dimensional in nature, is the result of conditions existing in relation to a lot or parcel, but not of the creation of the applicant, including such possibilities as narrowness, shallowness or irregular shape of lot due to platting or parcelling prior to the enactment of zoning or if the lot or parcel has unusual natural characteristics such as topography, water features, wetlands, vegetation, geological or soil conditions, historical, archaeological features, etc.

- n. That the variance granted is the minimum necessary to permit the reasonable use of the property in terms of the comparable reasonable use of all other properties in the Zoning District.
- o. That, if the requested variance, satisfies the ZBA as to the finding of facts in relation to the a. through n. above to the extent that such findings support the granting of the variance, the ZBA as the authority to grant the variance without conditions or to grant it with conditions. The reasons, as extracted from a. through n. for granting the variance should be so stated in the official minutes of the ZBA, which is its official public record of all actions.
- p. That, if the requested variance, does not satisfy the ZBA as to the finding of facts in relation to a. through n. above to the extent that such facts support the denial of the variance, the ZBA has the authority to deny the variance. The reasons for denial, as extracted from a. through n. above, should be so stated in the official minutes of the ZBA, which is its official public record of all actions.
- q. The ZBA meetings and all of its records are subject to the "Public Open Meetings Act" (P.A. 267 of 1976) and the "Freedom of Information Act" (P.A. 442 of 1976).
- r. That, if a requested variance is denied or approved, the applicant or an aggrieved party within a specified period of time (21 days according to *Shlega v Detroit ZBA*, 147 app 79, 382 NW2d 737, 1985) can appeal the ZBA decision to deny or approve in Circuit Court. No local legislative, appointed or other body of agency or official has the authority to review or override the ZBA decision otherwise.
- s. That, if a variance is denied, it is usual in Zoning Ordinances to require a one (1) year waiting period before an application for the same variance is again requested. However, the Zoning Ordinance may permit the re-consideration of the same request before the one (1) year period is up if new evidence has been found and submitted for reconsideration by the ZBA and its subsequent decision to hear or not hear the same request.
- t. When a variance has been granted by the ZBA, it is turned over to the Zoning Administrator for the issuance of a Zoning Permit and to administer and enforce the ZBA's granted variance and any conditions which they may place upon it along with all other requirements of the Zoning Ordinance.
- u. The ZBA has no jurisdiction over site plans required for any use, including special land uses and planned unit developments, except as specifically authorized by the Zoning Ordinance. Site Plan Review and approval have been exclusively eliminated from the review and granting of variances by the ZBA. By statute these can only be reviewed and approved by the Township Board, Planning Commission or a designated official (e.g. Zoning Officer).

ARTICLE III

Applications for a Hearing

1. All applications for a hearing or appeal shall pertain to a specific property and be in accordance with these rules.
2. Applications shall be filed within ____ (no.) days from the date of denial of a permit or disapproval.
3. The application shall be made only by a person(s) having a proprietary interest in the subject premises or by an authorized agent but must at least include the notarized signature of the owner in fee of the property on all applications.
4. All applications shall be made on the form provided by the Board, and shall be accompanied by all the information required by such form, and shall be considered subject to such rules as the Board has adopted, as amended at the time of receipt of the application.
5. Any communication purporting to be an application shall be regarded as mere notice of intention to seek relief until it has been made in the form required and specified in 4. above.
6. In considering applications the Board of Appeals shall grant variances only as provided for in Section 602 of the Zoning Ordinance and its By-Laws on Rules of Procedure.