

GUIDE FOR APPLYING FOR ORDINANCE VARIANCE CITY OF ORCHARD LAKE VILLAGE

INTRODUCTION

The State of Michigan's Zoning Enabling Act #207 of the Public Acts of 1921, as amended, establishes the right of cities to distinguish zones or districts within which the use of land and structures may be restricted and regulated. The Legislative body of a city may regulate and limit the height and bulk of buildings and determine the area of yards, courts and other open spaces. Such regulations must be uniform for each class of building in a district, but may differ from those in other districts. The purpose of these regulations is to insure the development of the city in accordance with a master plan designed to promote the health, safety and general welfare of the community and to protect the character, property values and viability of the city.

The Zoning Enabling Act also provides for the formulation of a Zoning Board of Appeals (ZBA) to serve in a quasi-judicial role to hear and decide variances from the Zoning Ordinance and to review requirements, decisions or determinations made by an administrative official charged with the enforcement of the ordinance.

The City of Orchard Lake Village Zoning Ordinance provides the ZBA with the following powers:

1. **Administrative Review:** to decide variances on any order, requirement, permit, decision or refusal made by the Building Official in enforcing the Zoning Ordinance (No. 14.01).
2. **Specific variances which the ZBA may grant include the following where there are practical difficulties or unnecessary hardships:**
 - a. **HEIGHT, YARD SPACES AND AREA REQUIREMENT.** The ZBA may permit such modification of the height, yard space and area requirements as may be necessary to secure appropriate improvement of a lot which is of such shape or so located with relation to surrounding development or physical characteristics that it cannot otherwise be appropriately improved without such modification.
 - b. **ADDITIONS TO BUILDINGS.** The ZBA may permit modification of zoning requirements for additions or enlargements to existing buildings provided that all requirements for the particular use in the zone where such use is first permitted cannot be met without extreme physical hardship owing to the shape of the lot, adjacent land uses or topography.
 - c. **OTHER.** In addition to the above, the ZBA shall have power in passing upon appeals to vary or modify any of its rules, regulations or provisions relating to the construction, structural changes in, equipment or alteration of buildings or structures, so that the spirit of the Ordinance shall be observed, public safety secured and substantial justice done.

VARIANCE PRINCIPLES

A variance is authorization by the Zoning Board of Appeals (ZBA) to use a parcel or structure in violation of the ordinance requirements when certain findings have been made. Clearly, variance need to be carefully considered and under normal circumstances should be rarely granted.

The ZBA's variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting him or her. A variance is not a technique for granting special favors or a tool for solving problems shared in common with other properties.

Often, people will indicate to the ZBA that a variance should be granted to allow them to make more money from the property. This is not a legitimate argument, since zoning is not designed to permit the most profitable use of land, although reasonable use of property must be permitted.

In the City of Orchard Lake Village, the ZBA is authorized to grant *non-use variances*. A non-use variance is often called a dimensional variance because it usually deals with setback, height, lot coverage, frontage requirements or area requirements.

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

1. The 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 inhibit the construction of a principal or accessory structure in compliance with ordinance standards.

Because the City of Orchard Lake Village is a lakefront community that places high regard on preservation of natural features and topography, unusual characteristics of the property are frequently cited by applicants as justification for variance. For example, a parcel of land might slope so steeply on one side that it is not feasible to construct a dwelling without violating minimum setback requirements (see illustration).

2. The problem cited by the applicant creates a practical difficulty which is unique and is not shared by neighboring properties in the same zone. IF the ZBA finds that the situation described by the applicant is common among other property owners, amending the zoning ordinance might be the proper solution.

When the ZBA has observed several variance requests from the same requirement, they have typically requested the Planning Commission to review the ordinance requirement to determine if it is reasonable. On some occasions, this action has resulted in a zoning amendment. However, a zoning amendment is not justified in all cases where there are numerous variance requests dealing with the same issue. For example, many property owners request height variances, but the current height standards reflect the values and goals of the community.

3. The practical difficulty must not be 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 a result of governmental action. A self-created hardship is typically not a valid basis for a variance.

Lakefront property owners frequently build their houses as close to the lake as possible in compliance with lakefront setback requirements. Then, a few years after living in the house, the owner submits plans for a new deck or patio, only to find that the deck or patio does not comply with the minimum setback requirements. In this case, the hardship was created by the applicant as a result of his or her action to build the house as close to the lake as possible. A variance in this case would not be justified.

4. The requested variance is the minimum necessary to permit reasonable use of the land and building for activities permitted in the zoning district.

Height variance requests are common on properties where there is unusual topography, particularly if there is a small hill in the exact location where the building is proposed. A variance may be appropriate in this case to account for the small hill, but properties cannot use such circumstances to justify a huge variance and construction of an extremely tall building. The setback situation in item 1, above, provides another example. If the slope of the land justifies a 2-foot setback variance, it would be inappropriate for the ZBA to grant a 6-foot setback variance.

5. Granting the variance must do substantial justice to the applicant as well as to other property owners in the district.

When considering a variance request, the ZBA must consider the impact on the applicant as well as surrounding properties. The goal of the ZBA is to protect the rights of both. For example, the ZBA is frequently requested to grant a variance from the lakeside setback requirements. In considering such a request, the ZBA must consider the impact such a variance would have on adjacent property owners' views of the lake and the enjoyment of their property.

6. IF the ZBA declines to grant the variance, the Zoning Ordinance regulations must not unreasonably prevent the owner from using the property for a permitted purpose, and must not render conformity unnecessarily burdensome.

The purpose of the Zoning Ordinance is not to prevent use of property. Rather, the purpose of the Ordinance is to permit development in a manner that is compatible with existing development in the City, and that is compatible with the goals set forth in the Master Plan. In summary, the intent of the ZBA is to provide for reasonable use of property in the City. It is not within the ZBA's authority, however, to use its variance powers to simply allow a property owner to construct the largest, the longest, or the tallest structure in the City, or to construct a structure that is closer to the lake than any other structure.

7. Is the practical difficulty the result of an action on the part of the property owner?

A development difficulty created by the property owner is not a practical difficulty. For instance, if a property owner builds a house in such a manner that it would not be possible to expand the living room without encroaching on a required side yard, the ZBA will not recognize that as a legitimate practical difficulty.

8. Is the variance request limited to the least possible change needed to remove the practical difficulty?

The variance request should be for the minimum amount of alteration required to satisfy the property owner's needs. As every variance request must be satisfactorily substantiated, requests in excess of absolute needs are likely to be rejected. This means simply that if a rear yard drops off steeply and the property

owner needs to locate the house two feet (2') into the required front yard to compensate for this, the property owner would have to request a variance for two feet (2'); not six feet (6').

9. Would approval of the variance request cause an adverse impact upon the residents of the neighborhood?

Any infringement of the property rights of a neighbor that would be caused by the granting of a variance is cause for the variance to be denied. This may apply to very tenuous considerations such as perceived adequate open living space or access to sunlight.

10. Would approval of the variance request cause an alteration in the general character of the neighborhood?

If the variance approval were to alter one's property to such an extent as to provide an inconsistency in the neighborhood, this might be cause for denial.

11. Would approval of the variance be inconsistent with the City's Master Plan?

This is a rare occurrence, yet it is possible, so it should be considered carefully.

12. Could the practical difficulty be remedied in some way which would not necessitate a variance?

If the variance request is not a case of last resort, it is likely to be denied. That is, if it can be shown that the practical difficulty can be removed within the guidelines of the Zoning Ordinance, the variance request will not be approved.

As an example, a colonial style house might fulfill one's living area needs and still satisfy the requirements of the Zoning Ordinance, where a ranch style house might fail.

Keep in mind that all variances requested are considered individually. Each request is considered on its own respective merits.

The fact that similar variances have been granted under the same conditions or in the same vicinity cannot be held as evidence of the worthiness of additional variances on other property.

STANDARDS FOR JUDGING VARIANCES

In consideration of all proposed variations of the Zoning Ordinance, the ZBA shall, before making any variation from the Ordinance in a specific case, first determine that the proposed variation involves exceptional circumstances not found in other areas of the same zone, will be in harmony with the general purposes and intent of the Ordinance, will not in any respect impair the public health, safety, comfort or welfare of the inhabitants of the City, and meets the following general standards:

1. The proposed variance will be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.
2. The proposed variance will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking,

and provisions for pedestrian traffic, with particular attention to minimizing child vehicle contacts in residential districts.

3. The location, size, intensity, site layout and periods of operation of any such proposed variances will be designed to eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.
4. The location and height of buildings or structures and the location, nature and height of walls and fences will be such that the proposed variance will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

THE PARTICIPANTS IN THE VARIANCE PROCESS

There are three (3) major participants in the variance process. These include: (1) Building Department and City Clerk; (2) Zoning Board of Appeals and (3) Public.

Building Department. Will provide information and answer any questions regarding the variance application. The Building Department and the City Clerk administer the Zoning Board of Appeals by accepting and processing the application and sending out the required notices to property owners within one thousand feet (1,000') of the subject site.

Zoning Board of Appeals. A seven (7) member board, consisting of the City Councilmembers, will hold a public hearing and render a decision on the variance request.

Public. Without citizen participation, the Zoning Board of Appeals must substitute its judgment for the views of the residents and property owners in the area of the variance request.

THE VARIANCE PROCESS

Step 1. Secure an application for the Zoning Board of Appeals from the Building Department and/or the City Clerk and prepare the necessary data.

Step 2. File the application form and pay the necessary fee along with eleven (11) copies of a sealed or notarized survey indicating the proposed work to the Building Department or the City Clerk.

Step 3. Upon receipt of the application form, it will be scheduled for public hearing at the earliest available meeting of the Zoning Board of Appeals.

An application must be received at least twenty (25) days prior to the next meeting date of the Zoning Board of Appeals in order to be placed on the agenda.

Meeting of the Zoning Board of Appeals are held on the third Monday of each month at 7:00 p.m.

Step 4. All property owners within one thousand feet (1000') of the subject property will be notified of the hearing by mail.

Step 5. The petitioner will present the justification for the variance at the public hearing. At the time of the public hearing, the petitioner or his designated representative must appear to present the proposal and provide reasons for granting the request.

The board will hear the petitioner's case and then any comments from the public in favor of, or against, the petitioner's request. The Board will then vote to either approve, deny or table the request for modification or further study.

A variance approval by the Board may not exceed the amount nor can it exceed the specific items contained in the notification. However, a lesser variance may be approved without prior notice.

In order for the ZBA to act on a matter before them, a quorum of four (4) members must be present. The affirmative vote of four (4) members of the Board is required in order to approve a matter.

The decision of the ZBA shall be final. However, a person may submit an alternative or an entirely new request or appeal the decision to the Circuit Court.

Step 6. The granting of the variance becomes official only upon issuance of a Building or Zoning permit for the subject property.

Failure to comply with any stipulations and conditions associated with the granting of the variance request is cause for the approval to become null and void.

No order to the ZBA permitting the erection or alteration of a building, open air, land use or parking lot shall be valid for a period longer than six (6) months unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for the erection or alteration is started and proceeds to completion in accordance with such permit.

ZONING BOARD OF APPEALS FEE

The fee established by the Zoning Board of Appeals for hearing variances is: \$250.00. **(IF WORK HAS ALREADY STARTED PRIOR TO THE ZBA HEARING THE COST FOR THE HEARING WILL BE \$750.00).**

When a variance request is tabled, the City requires an additional \$75.00 be submitted to cover the expense of re-notifying all property owners within one thousand feet (1000').

Amended: 7/1/2003

Amended: 12/21/2009

Amended: 6/26/2012