

# **CHARTER TOWNSHIP OF HIGHLAND ZONING BOARD OF APPEALS INSTRUCTIONS AND INFORMATION**

The instruction and information sheets are designed to help you understand the appeal process and to help you submit a complete application for review by the Zoning Board of Appeals. If you have any questions after reading these instructions, you may contact the Planning and Zoning department for assistance.

## **JURISDICTION AND STANDARDS**

The Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of the Ordinance nor to permit any use in a district in which it is not permitted.

The Board of Appeals does have the power to act as follows:

### **ORDINANCE INTERPRETATION**

To interpret the language and map of the Zoning Ordinance.

### **ADMINISTRATIVE REVIEW**

To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit decision or refusal made by the Zoning Administrator or any other administrative official or body in carrying out or enforcing any provision of the Ordinance. The Board of Appeals shall not have the power to hear and decide appeals pertaining to special land uses.

### **VARIANCE**

A variance shall be classified as either a use variances or a dimensional variances.

**Use variances shall not be approved in the Township.**

Dimensional variances shall be approved only upon a Board of Appeals finding that strict application of the regulations would result in peculiar or exceptional practical difficulties to the owner of such property. **SUCH A FINDING SHALL BE MADE, ONLY WHEN ALL OF THE FOLLOWING CRITERIA ARE MET:**

- 1) Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district. Characteristics of property that shall be considered shall include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation, and other similar characteristics.
- 2) The characteristics that make compliance with dimensional requirements difficult must be related to the premises for which the variance is sought, not some other location.
- 3) The characteristics that make compliance with the dimensional requirements difficult shall not be of a personal nature.
- 4) The characteristics that make compliance with the dimensional requirements difficult must not have been created by the current or a previous owner.
- 5) The proposed variance will not be harmful to or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the Public safety, or unreasonably diminish or impair established property value

within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township.

- 6) The proposed variance will be the minimum necessary, and no variance shall be granted where a different solution not requiring a variance would be possible.
- 7) **The Board Of Appeals Shall Not Find That Any Of The Above Criteria Have Been Met Without Substantial Evidence To That Effect.**

Any variance approval shall be void after a period of twelve (12) months unless the construction so authorized is commenced within twelve (12) months of the granting of the variance And diligently pursued until completion.

### **STANDING TO APPEAL (SEEK DIMENSIONAL VARIANCE)**

The applicant may be the owner or any other person granted authorization by the owner to seek a dimensional variance. A hearing for a dimensional variance will not be scheduled until the chain of title is traced back to a warranty deed, so processing may be expedited if the applicant provides a copy of the warranty deed at the time of application.

Any person who alleges that there has been an error in fact, judgment, process or interpretation of the ordinance in an order, requirement, permit or other decision of a Township staff member or official may act as applicant.

Any person may act as an applicant when seeking an interpretation of the ordinance.

### **GUIDELINES FOR DRAWING A SCALED PLOT PLAN**

Scaled plot plans of the subject parcel must accompany the application.

**INCOMPLETE APPLICATIONS OR DRAWINGS WILL NOT BE ACCEPTED.**

Your plot plans must include the following:

1. The actual shape, location and dimensions of the lot.
2. The shape, size and location of all buildings or other structures to be erected, altered, or moved and of any building or other structures already on the lot.
3. The location of drives, access ways, easements, septic tanks, wells, overhead and underground utilities, and drain fields.
4. The location of water bodies and water courses including the ordinary high-water mark and floodplain elevations, where applicable.
5. The distance to all structures and wells on adjacent parcels and their use, e.g., home, barn, shed, wells, etc.
6. The existing and intended use of the lot and of all such structures upon it, including in residential areas, the number of dwelling units the building is intended to accommodate. ***Floor plans and elevations are required.***

The Zoning Board of Appeals receives application materials in a .pdf format, viewable on electronic tablets. Applicants must supply (1) one hard copy of the plot plan and application materials. It is further requested that a .pdf format electronic file is provided (*via email at Planning@highlandtwp.org*) when possible. Additional information may be required to review the application for conformance with the Zoning Ordinance.

## **STAKING OF PROPERTY**

The Board of Appeals members make on site inspections of all requests. Your property lines and proposed construction must be clearly marked ten (10) days prior to the hearing date. Wood stakes or florescent paint lines are acceptable. If the Board Members are unable to clearly define the property in question because of failure of applicant to comply with this requirement, NO ACTION WILL BE TAKEN AT THE SCHEDULED PUBLIC HEARING.

If you cannot locate your property irons, you should plan to retain the services of a professional land surveyor to establish your boundaries. At minimum, a line survey will be required for property lines where new construction is proposed within 5 feet of the property lines.

In addition to staking, vacant property must be posted with the Applicant's name and case number. The sign must be 8 1/2" X 11" or larger.

## **MEETING DATES AND APPLICATION DEADLINES**

The Zoning Board Appeals meets the first and third Wednesdays of each month at 7:30 p.m. Only five (5) cases are heard at each meeting. Check with the Planning and Zoning Department for the next available hearing date. You should plan on a *minimum* of six weeks from date of application to receipt of building permits.

## **BUILDING PERMITS**

**Building permits are Not Automatically Issued. If a variance is granted, you must apply for a building permit. The building dept. will not accept your application until the approved minutes are published. (Typically two (2) to three (3) weeks after the decision.)**

## **CHARTER TOWNSHIP OF HIGHLAND ZONING BOARD OF APPEALS FREQUENTLY ASKED QUESTIONS (FAQ's)**

This information has been prepared to assist you in coming before The Zoning Board of Appeals (ZBA) of the Charter Township of Highland. The intent is to help you understand what the ZBA is, what it can and cannot do, what to expect, and what you can do to help your own case. We hope you find this information useful. If you would like further assistance, you are welcome to contact Planning staff at the Township office during business hours.

The ZBA is made up of seven members who are appointed by the Township Board of Trustees on the recommendation of the Supervisor. Members must be residents of the Township and are appointed for 3-year terms. One member must be on the Planning Commission. Officers of the ZBA (chair, vice-chair, secretary) are elected by the ZBA.

The ZBA operates under the authority of the Michigan Enabling Zoning Act and the Zoning Ordinance of the Charter Township of Highland. Decisions of the ZBA are final. Their decisions are appealable only through the circuit court.

The ZBA normally meets on the first and third Wednesday of each month. Meetings are held in the Township Auditorium adjacent to the Township offices, at 7:30 P.M. There are occasional changes in this schedule, and these are posted at the Township offices.

ZBA hearings are public hearings and are conducted in accordance with the Michigan Open Meetings Act. Copies of each meeting's agenda are available at the meeting. Minutes are taken and may be obtained from the Township office; there is a nominal charge.

Anyone who wishes to attend a ZBA meeting may do so. Anyone with comments relevant to an item being considered may speak at the appropriate time during a meeting.

### **What is a "variance"?**

*A variance is a permission to deviate from the Township Zoning ordinance.* The ZBA may grant variances from the applicable ordinance requirement for setbacks, lot size and various other specific items. The ZBA may not grant use variances; that is the granting of permission to use a property for a purpose other than that which is permitted by its zoning classification.

The ZBA may interpret the Zoning Ordinance in certain cases and make judgments regarding the applicability of certain ordinances in specific situations. The Zoning Administrator should be consulted for more detail on these specific situations.

The granting of a variance depends on the existence of a "*practical difficulty*". *A practical difficulty is a situation not of the property owners making which prevents the property from being used for the purpose for which it was intended.* Economic issues do not constitute a practical difficulty.

### **How to best present your case:**

- Attend a ZBA meeting prior to your case being heard, to familiarize yourself with procedures.
- Information or detail that is not relevant to your case should not be included in your application. For instance, if you are asking for a side lot line variance, the Board does not need or want information about what types of windows will be placed in the structure you want to build.
- If you are presenting a site plan, sketch, or drawing,
  - draw it to scale
  - show directional orientation (North, South, etc.)
  - show buildings and features in the correct position relative to each other.
  - make it clear, uncluttered, and easy to read.
  - if there is information you do not know for certain, for instance, the precise location of a septic field or road right of way, estimate it and indicate that it is an estimate.
- Requests should be clear and specific. Be sure that you know exactly what you want the Board to do; if you don't know, the Board won't know either.

### **Things you must do to have your case heard:**

1. Consult the Zoning Administrator for specifics of the ordinance you are requesting a variance from. Obtain the necessary forms and instructions.
2. Complete paperwork and submit to the Zoning Administrator. Pay your fees. You will be notified by mail of your hearing date.
3. Stake the property and proposed construction at least one week prior to the hearing date. What you want to build or do must be clearly marked and be able to be understood by the members of the board. Board members will visit the site prior to the hearing at a time that is convenient for each individual member; you do not need to be present. **If the site is not clearly marked your case will not be heard.**
4. Be present on the night your case is to be heard. If someone else is to represent you, a contractor or builder for instance, you must submit a letter to Board through the Zoning Administrator at the Township offices during business hours.
5. Questions regarding completing the application, procedures for filing, or other concerns you may have regarding your application for a variance may be directed to the office of the Zoning Administrator at the Township Hall during business hours.

**The Charter Township of Highland**  
**205 N. John St.**  
**Highland, MI 48357**  
**(248) 887-3791, ext. 2**  
**Planning Dept.**  
**Hours: M - Th 8:30 a. m – 5:00 p.m.**  
**F - 8:00 a.m. – 4:00 p.m.**

## **TEN TIMELY TIPS FOR A SUCCESSFUL VARIANCE**

### **TIP #1 BEFORE FILING VARIANCE: DO YOU REALLY NEED ONE?**

- a. Understand why your permit was rejected.
- b. Can you live within the ordinance?
- c. Do you really “need” a variance – or just “want” one?

### **TIP #2 BEFORE FILING A VARIANCE: DO YOUR HOMEWORK**

- a. Talk to the building department.
- b. Talk to your neighbors.
- c. Look, see and observe if similar variances have been granted.
- d. Understand what the legal test is for board relief.

### **TIP #3 WHEN YOU FILE YOUR VARIANCE PETITION**

- a. Write neatly & legibly or type your application.
- b. State specifically why you need the variance, what is your hardship, and why the ordinance which caused your denial unfairly affects you.
- c. Attach all relevant documents to your application.
- d. Avoid, if possible, submitting new documentation to the board during the hearing.
- e. If you cannot submit complex documentation until the hearing itself, consider an adjournment until the next scheduled meeting.

### **TIP #4 AFTER FILING, BUT BEFORE THE HEARING**

- a. Several board members will inspect the site before the hearing.
- b. “Clean-up” the property site before inspection.
- c. Talk to your neighbors about your variance, get their support.
- d. If you get neighbor support, have them make a brief, concise statement at the hearing or send a letter.

### **TIP #5 AFTER FILING, BUT BEFORE THE HEARING**

- a. If you expect opposition, examine the township ZBA file a day or two before the hearing, any written opposition will be on file.
- b. Be prepared to deal with written objections at the hearing.
- c. Consider modifying your variance request to meet objections.

### **TIP #6- AT THE VARIANCE HEARING: STOP, LOOK AND LISTEN**

- a. Stop and examine the agenda; if there are similar cases to yours, listen to how the board responds to those cases.
- b. Look around you – if you see your neighbors, try to find out if they are opposed, and if so, why? Can you enlist their support because they didn’t understand what you are trying to do?
- c. Listen to the board; both their questions and discussion may be an attempt to steer you to a compromise. Never take an “all or nothing” position.

### **TIP #7 DURING YOUR VARIANCE PRESENTATION**

- a. Be concise and to the point; the board has read your petition, examined your documents, and probably inspected the property or variance site.
- b. Never be rude, threatening or confrontational with the board; this will insure Denial.
- c. Never read your application word for word to the board – summarize it.

**TIP #8 IF YOU ARE REQUESTING A SIGN VARIANCE**

- a. Be sure you have a genuine need and is not just a marketing ploy.
- b. If the variance relates to size, be prepared to be flexible.
- c. If the variance is related to the number of signs, be prepared to explain why they are needed and what the hardship is.

**TIP #9 IF YOU ARE REQUESTING A DIMENSIONAL OR PROPERTY VARIANCE**

- a. Demonstrate why the practical difficulty is unique to your situation because of land shape, size, or topography.
- b. Convincingly communicate that the practical difficulty was not self-created
- c. Point out that the variance is the bare minimum needed to correct the problem.
- d. Suggest that the variance will not negatively impact any neighbor, nor will it alter the essential character of the land.

**TIP #10 VARIANCE GRANTED: WHAT ELSE TO DO?**

- a. Apply for necessary permits.
- b. Make sure you comply with the variance.

# Proving a practical difficulty for a dimensional variance request

Brad Neumann, [Michigan State University Extension](#) - August 24, 2022

While inherently rigid, there are mechanisms in zoning to allow for flexibility.

A zoning ordinance is inherently rigid. Within this rigid structure of zoning are the definitions of where suitable uses can take place, the bulk or scale of those uses allowed, how those uses are accessed, etc. There must also be mechanisms for flexibility based on statutory ([Michigan Zoning Enabling Act](#)) and Constitutional ([5<sup>th</sup> Amendment](#)) grounds. Zoning must allow for differences in types of allowed uses, physical characteristics of the land, unique needs of neighborhoods and to prevent infringement on constitutionally protected property interests.

One mechanism for flexibility in zoning is the variance. A variance is the authority to depart from the literal application of the zoning ordinance because of an *Unnecessary Hardship* (in the case of a use variance) or a *Practical Difficulty* (in the case of a non-use or dimensional variance) resulting from the physical characteristics of the land. This article will focus on dimensional variances and the principles that amount to a showing of a practical difficulty.

## Dimensional Variances

The [Michigan Court of Appeals](#) has applied the following principles in dimensional variance court cases, which **collectively** amount to the showing of a practical difficulty (*National Boatland, Inc. v. Farmington Hills ZBA*, 146 Mich App 380 (1985)):

- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use or would render conformity necessarily burdensome.



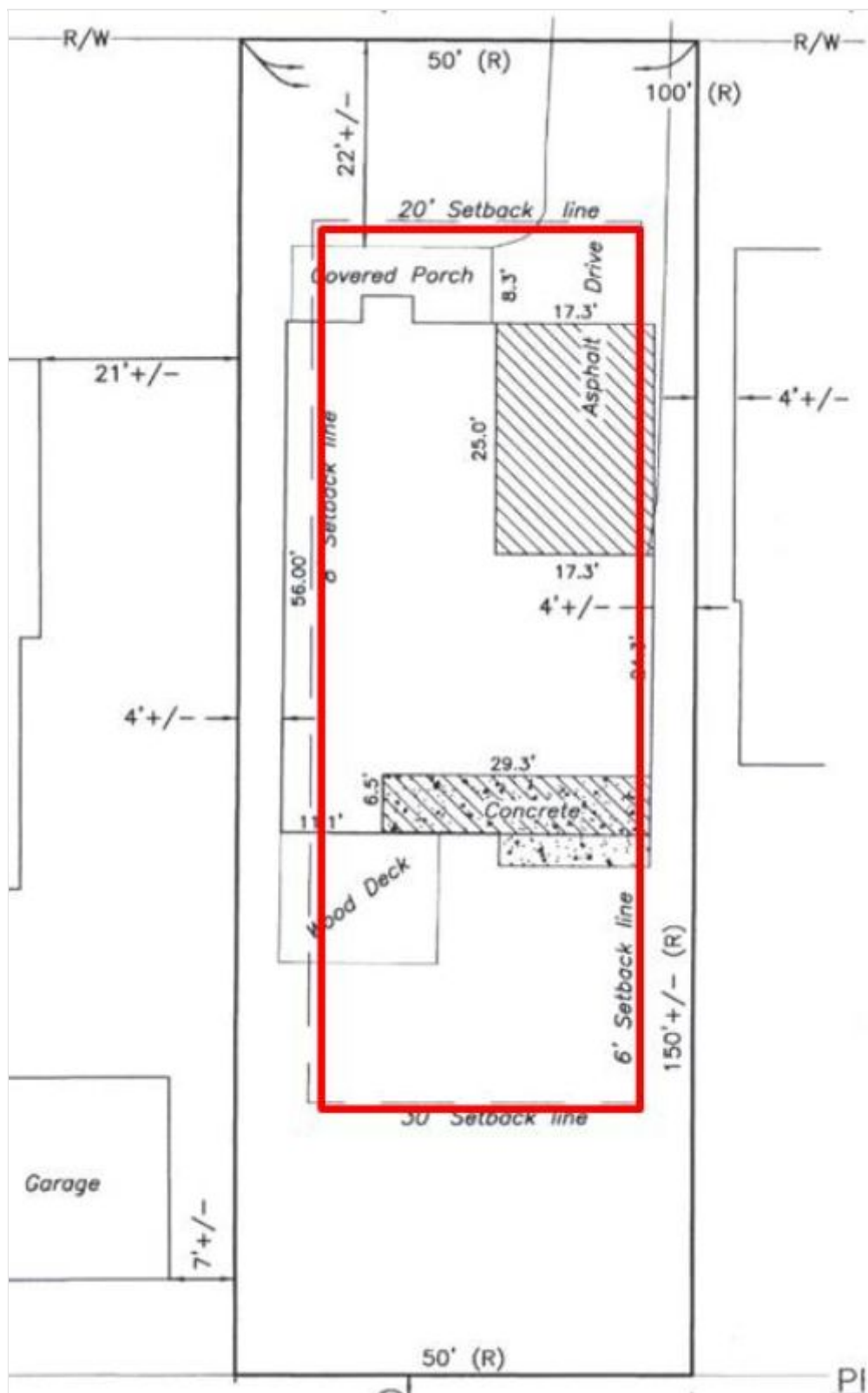


Figure 1: The home addition proposed in this plan requires a dimensional variance from the side yard setback. There are no unique characteristics of this lot or of the land and the design could be changed to meet the setback. Technically, this variance request should be denied.

- The particular request, or a lesser relaxation of ordinance standard, would provide substantial justice to the landowner and neighbors;

- The plight is due to unique circumstances of property and is not shared by neighboring properties in the same zone.
- The problem is not self-created.

Again, the standards come from case law. The Michigan Zoning Enabling Act does not define what a practical difficulty is, though the statute does state “the ordinance shall establish procedures for the review and standards for approval of all types of variances” (Sec. 604(7)). Therefore, the zoning ordinance shall include these standards and may include additional standards that apply to dimensional variance requests.

## **Seeking Alternatives**

For the first standard (above), the zoning board of appeals (ZBA) should figure out if there is a way to accomplish the same purpose without a variance even if it will be more inconvenient or more expensive for the applicant. If so, a variance should not be granted. For example, if the design for an addition proposed by the applicant can be changed such that a variance is no longer needed, the variance request should be denied (see Figure 1). A variance is granted for circumstances unique to the property (e.g. odd shape), not those unique to the property owner (e.g. large family).

## **Is there another option?**

On the second standard, there are valid health and safety reasons for zoning setbacks, but when these regulations treat an applicant unfairly in relation to unique aspects of the land they should be relaxed. However, if a lesser variance than requested would provide substantial justice to the property owner, the lesser variance should be considered. For example, if the request is to encroach into the setback by 4 feet, but a 2-foot encroachment would allow the owner to use their property for the permitted use then the appeals board must not approve a greater variance than minimally necessary (see Figure 2).

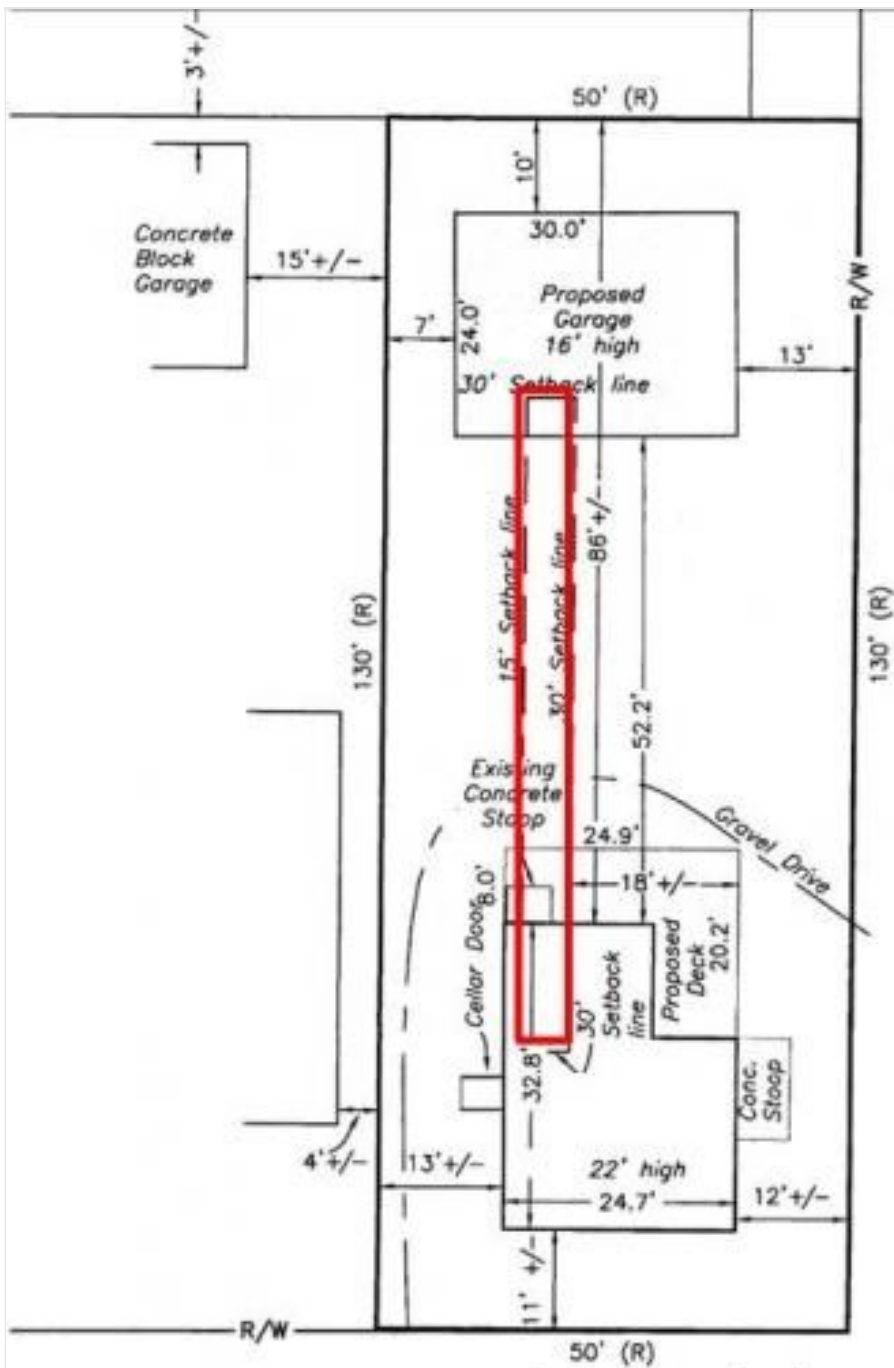


Figure 2: With two front yard setbacks (red line is the buildable envelope) this corner lot has unique circumstances for which a variance to construct a garage may be warranted. However, the proposed three-car garage in this plan is probably beyond the minimum necessary and may not be fair to neighboring properties in the single-family zone.

## Amending an ordinance

Third, if the circumstances for which a variance is warranted are shared among numerous properties in the same zone, then the variance request should be denied. It may be better to consider amending the zoning ordinance. For instance, a historic portion of a community developed around the turn of the 20<sup>th</sup> Century might have 50-foot lots throughout a neighborhood of single-family homes. If this neighborhood is

subject to the same zoning standards as neighborhoods developed later with 70-foot-wide lots, projects not requiring a dimensional variance in the newer neighborhood will most likely require a variance in the historic neighborhood. The proper solution is to create a new zoning district for the historic neighborhood that is more reflective of the existing character (see [Study neighborhood typology to discover a library of information on form](#)).

## Is the issue "self-created"?

The fourth standard is widely misunderstood among ZBA members. The proper interpretation is to ask whether the applicant took some affirmative action that created the need for the variance, such as making an unusual land division (shape), filling the entire building envelope so that a porch must necessarily extend into the setback area, digging a pond, etc. A practical difficulty cannot be self-created (*Norman Corp v. City of East Tawas*, 263 Mich App 194 (2004)). Being "self-created" includes actions of the current property owner and actions of all previous owners.

In other words, a self-created practical difficulty by a predecessor in title can bar a subsequent owner from a legitimate variance request (*Johnson v. Robinson Twp*, 420 Mich 115 (1984)). At the same time, the Court of Appeals recognizes that merely purchasing property with the knowledge of ordinance limitations does not preclude someone from applying for (and receiving) a variance (*City of Detroit v. City of Detroit BZA*, 326 Mich App 248 (2018)). The key is whether a property owner — present or past, took affirmative action to alter the property counter to the controlling ordinance at the time. The purchase of a unique lot, even with knowledge of the current ordinance, should not be held against a new owner. This standard is inappropriately applied if a ZBA member sees the presence of the applicant before the ZBA as a self-created situation. This mindset would lead to the conclusion that all variance requests are self-created. It is not an applicant's desire for a variance that is a self-created problem; it is an applicant's previous action to fill the buildable envelope with structures, or divide the parcel into an unusual shape that is the self-created problem.

Lastly, it is important to note that all the standards that amount to the showing of a practical difficulty must be satisfied in order for a variance to be granted. The list of standards from the Court of Appeals, and any additional standards in the zoning ordinance, must all be satisfied in order for the applicant to have a practical difficulty. The collection of facts that satisfy all of the applicable standards must then be captured in the record to document the reasons for the decision (see [How to take Minutes for Administrative Decisions](#)).

The role of the ZBA member is an unenviable one. Board members are asked to apply the standards described in this article (and possibly more) to the requests of perfect strangers, acquaintances, and friends alike (outside of a bona fide conflict of interest) and do so consistently and without bias. Doing so is easier when all members of the ZBA understand the standards in the ordinance and have reference material in front of them at each meeting that spells out what constitutes a practical difficulty (or unnecessary hardship). Michigan State University Extension offers training for ZBA members to help them make more legally defensible decisions. Contact a land use educator to learn more. This article was published by **Michigan State University Extension**. For more information, visit <https://extension.msu.edu>. To have a digest of information delivered straight to your email inbox, visit <https://extension.msu.edu/newsletters>. To contact an expert in your area, visit <https://extension.msu.edu/experts>, or call 888-MSUE4MI (888-678-3464).

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CHARTER TOWNSHIP OF HIGHLAND  
ZONING BOARD OF APPEALS  
WORKSHEET

The worksheet is designed to help you understand the appeal process and to help you submit a complete application for review by the Zoning Board of Appeals. If you have any questions after reading this worksheet you may contact the Planning and Zoning Department for assistance.

**HAVE YOU MET ALL OF THE FOLLOWING CRITERIA?**

- 1) Do the characteristics of the property include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation or other similar characteristics? If so, please describe here.

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- 2) Can the project be redesigned to meet the zoning requirements without the need for a variance?

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- 3) Is the reason for a variance request of a personal nature? (for example: financial impact, physical and/or mental characteristics of the household members, inconvenience, etc.)

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- 4) Has the difficulty been created by the current or previous owner?

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- 5) Will the proposed variance be harmful to or alter the essential character of the area in which the property is located?

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- 6) Will the proposed variance be the minimum necessary?

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Signature \_\_\_\_\_

Case # \_\_\_\_\_

Hearing Date \_\_\_\_\_

**CHARTER TOWNSHIP OF HIGHLAND ZONING BOARD OF APPEALS  
APPLICATION FOR APPEAL**

APPLICANT	OWNER
NAME: _____	NAME: _____
ADDRESS: _____ _____ _____	ADDRESS: _____ _____ _____
PHONE: _____	PHONE: _____
EMAIL: _____	EMAIL: _____

PROPERTY ADDRESS: \_\_\_\_\_

ZONING: \_\_\_\_\_ PROPERTY TAX ID NO: \_\_\_\_\_

ORDINANCE SECTIONS BEING APPEALED: \_\_\_\_\_

VARIANCES REQUESTED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DESCRIBE THE NATURE OF YOUR PRACTICAL DIFFICULTY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that all required information is shown on the attached plan and included on this form. I acknowledge that by signing this application, I am granting the right of the Zoning Board of appeals members, inspectors and administrators to conduct a site inspection of the subject property. All statements are true to the best of my knowledge.

SIGNATURE OF OWNER: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNATURE OF APPLICANT: \_\_\_\_\_ DATE: \_\_\_\_\_

**Signature of applicant must be notarized.**

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Notary Public

My Commission expires \_\_\_\_\_

APPLICATION FEE: _____	
Receipt# _____	Date Paid _____
Received by _____	

Form revised 5/21/2024  
S:\Planning Department New Folder\Zoning Board of  
Appeals\forms\ZBA Application form