

MEMO

TO: Northfield Township Planning Commission
FROM: Sally Hodges, AICP
Senior Vice President
SUBJECT: Proposed Amendments to the Standards for Approval of Variances
DATE: May 11, 2016

The Zoning Board of Appeals (ZBA) has requested that the Planning Commission consider amendments to the standards used by the ZBA when considering and granting variances from the Zoning Ordinance. Currently the Ordinance's standards for determining whether a variance is warranted are very rigid. While variances should not be given easily or frequently, the ZBA has found that in practice, the current standards do not allow sufficient flexibility for reasonable determinations.

The revisions we propose are consistent with the Michigan Zoning Enabling Act, and are used in several other communities in which we work. Also, in the amendments, we have clarified that the appropriate test for a dimensional variance is "practical difficulty". The test of "unnecessary hardship" applies to uses variances and, except under very specific circumstances, townships may not grant use variances in Michigan.

For your consideration and ease of reading, I have attached both clean and track-changes versions of the proposed amendments. I look forward to discussing these with you at next week's meeting.

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Sec. 36-943. - Variances.

- (a) ~~Authority~~^{Intent}. The board of appeals shall have the ~~authority power and duty~~ to ~~provide relief from~~^{waive or relax} the provisions of this chapter in specific cases. To this end, the board of appeals may grant dimensional or non-use variances, to provide relief from specific requirements in this chapter relating to area, height, setbacks, or other non-use standards which will not be contrary to the public health, safety and general welfare interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in ~~unnecessary hardship or practical difficulty~~.
- (b) *Filing*. An application for a variance shall be filed with the township clerk by the record owner of the property in question or by a persons authorized to act on the record owner's behalf. The application shall consist of a completed application form, fee, and the information required in this section. The clerk shall transmit the application and information to each member of the board of appeals and to the zoning administrator within three days of the filing date.
- (c) *Information required*. An application for a variance shall contain the following information:
- (1) Legal description, address, and tax parcel number of the subject property.
 - (2) Boundary survey, showing all property lines, dimensions, and bearings of angles correlated with the legal description; all existing and proposed structures and uses on the property; existing zoning of subject and adjacent property; dimensions of structures and their dimensioned locations; lot area calculations necessary to show compliance with the regulations of this chapter. Such drawings shall also include well and septic locations, easements, and significant trees and wetlands if they exist on the site.
 - (3) Name and address of the applicant, property owners, interest of the applicant in the property, and signature of the property owner, if other than the applicant, concurring in the submittal of the application.
 - (4) Written statement of Rreasons for the variance request demonstrating:-
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and are not applicable to other lands, structures or buildings in the same district.
 - b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
 - c. That literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this chapter.

d. That granting the variance requested will not confer upon the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.

(d) *Standards of determination.* A dimensional variance shall not be granted by the board of appeals unless the board of appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this chapter. In determining whether a practical difficulty exists, the board of appeals must find that and until all the following conditions are met:

(1) Strict compliance with restrictions governing area, setback, frontage, height, lot coverage, density or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with those restrictions unnecessarily burdensome. A written application for a variance is submitted, demonstrating:

~~a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and are not applicable to other lands, structures or buildings in the same district.~~

~~b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.~~

~~c. That literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this chapter.~~

~~d. That granting the variance requested will not confer upon the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.~~

(2) The variance will provide substantial justice to the applicant, as well as other property owners in the district.

(3) The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.

(4) The need for the variance is due to unique circumstances that are peculiar to the land, structure or building involved and not generally applicable in the area or to other properties in the same zoning district.

(5) The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance and not by the applicant or the applicant's predecessors; it is not self-created.

(6) The variance will be in harmony with the spirit and intent of this ordinance, will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety and welfare.

Further, ~~t~~The existence of nonconforming uses of neighboring lands, structures, or buildings in the same district, any permitted or nonconforming uses of lands, structures or buildings in other districts, and nonconforming structures, shall not be considered grounds for the issuance of a variance.

~~(3) The board of appeals shall find that the reasons set forth in the application justify the granting of the variance, and that it is the minimum variance that will make possible the reasonable use of the land, building, or structure.~~

~~(4) The board of appeals shall further find that the requirements of this section have been satisfactorily met by the applicant.~~

~~(5) The board of appeals shall further find that the granting of the variance will be in harmony with the intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public interest.~~

~~(Ord. of 7-22-2013, § 66.11)~~

MEMO

TO: Board of Trustees
Northfield Township

FROM: Sally Hodges, AICP, Senior Vice President
McKenna Associates

SUBJECT: Recommendation to Amend the Zoning Ordinance pertaining to the Zoning Board of Appeals Standards for Variances

DATE: July 7, 2016

The Zoning Board of Appeals (ZBA) requested that the Planning Commission consider amendments to the standards used by the ZBA when considering and granting variances from the Zoning Ordinance. Currently the Ordinance's standards for determining whether a variance is warranted are quite rigid. While variances should not be given easily or frequently, the ZBA has found that in practice, the current standards do not allow sufficient flexibility for reasonable determinations.

The amendments the Commission proposes are consistent with the Michigan Zoning Enabling Act and have been upheld in the courts. Also, in the amendments, the text clarifies that the appropriate test for a dimensional variance is "practical difficulty". The test of "unnecessary hardship" applies only to use variances and, except under very specific circumstances townships may not grant use variances.

On July 6, 2016 the Planning Commission held a public hearing and recommended approval of the proposed amendments to ARTICLE XXX. ZONING BOARD OF APPEALS, Sections 36-943(a), 36-943(c), and 36-943(d) as included in your packet. We respectfully request that you approve the proposed amendments.

ORDINANCE NO. _____

NORTHFIELD TOWNSHIP, WASHTENAW COUNTY MI

AN ORDINANCE OF THE BOARD OF TRUSTEES OF NORTHFIELD TOWNSHIP, MICHIGAN, TO AMEND THE ZONING ORDINANCE TO UPDATE THE STANDARDS USED BY THE ZONING BOARD OF APPEALS TO GRANT VARIANCES

Whereas The Zoning Board of Appeals requested the Planning Commission to review the standards of the Township Zoning Ordinance that apply to all requests for variances; and,

Whereas, The Planning Commission compared the Township's standards to those in other communities, as provided by statute and as determined by courts; and,

Whereas, The Planning Commission held a public hearing and recommended approval of the following amendments.

Now, therefore, be it ordained by the Northfield Township Board of Trustees that the below zoning text and various articles be amended as follows:

Section 1: Article XXX. - ZONING BOARD OF APPEALS, Section 36-943, subsection (a) shall be amended to read as follows:

- (a) *Authority.* The board of appeals shall have the authority to provide relief from the provisions of this Ordinance in specific cases. To this end, the board of appeals may grant a dimensional or non-use variances to provide relief from specific requirements in this Ordinance relating to area, height, setbacks, or other non-use standards which will not be contrary to the public health, safety and general welfare and where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in a practical difficulty.

Section 2: Article XXX. - ZONING BOARD OF APPEALS, Section 36-943, subsection (c) shall be amended to read as follows:

- (c) *Information required.* An application for a variance shall contain the following information:
- (1) Legal description, address, and tax parcel number of the subject property.
 - (2) Boundary survey, showing all property lines, dimensions, and bearings of angles correlated with the legal description; all existing and proposed structures and uses on the property; existing zoning of subject and adjacent property; dimensions of structures and their dimensioned locations; lot area calculations necessary to show compliance with the regulations of this chapter. Such drawings shall also include well and septic locations, easements, and significant trees and wetlands if they exist on the site.
 - (3) Name and address of the applicant, property owners, interest of the applicant in the property, and signature of the property owner, if other than the applicant, concurring in the submittal of the application.
 - (4) Written statement of reasons for the variance request, demonstrating:

- a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and are not applicable to other lands, structures or buildings in the same district.
- b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
- c. That literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this chapter.
- d. That granting the variance requested will not confer upon the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.

Section 3: Article XXX. - ZONING BOARD OF APPEALS, Section 36-943, subsection (d) shall be amended to read as follows:

- (d) *Standards of determination.* A dimensional variance shall not be granted by the board of appeals unless the board of appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this Ordinance. In determining whether a practical difficulty exists, the board of appeals must find that the following conditions are met:
- (1) Strict compliance with restrictions governing area, setback, frontage, height, lot coverage, density or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with those restrictions unnecessarily burdensome.
 - (2) The variance will provide substantial justice to the applicant, as well as other property owners in the district.
 - (3) The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.
 - (4) The need for the variance is due to unique circumstances that are peculiar to the land, structure or building involved and not generally applicable in the area or to other properties in the same zoning district.
 - (5) The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, and not by the applicant or applicant's predecessors; it is not self-created.
 - (6) The variance will be in harmony with the spirit and intent of this ordinance, will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety and welfare.

Further, the existence of nonconforming uses of neighboring lands, structures, or buildings in the same district, any permitted or nonconforming uses of lands, structures or buildings in other districts, and nonconforming structures, shall not be considered grounds for the issuance of a variance.

Section 4: Miscellaneous

If any portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of any other portion of this Ordinance.

All ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. Provided, however, that such repeal shall be only to the extent of such inconsistency, and in all other respects the ordinances or parts of ordinances are hereby ratified, re-established and confirmed.

Section 5: Effective Date

The provisions of this Zoning Ordinance amendment are hereby ordered to take effect the day following its publication in a newspaper of general circulation within the Township. This Ordinance is hereby declared to have been adopted by the Township Board of Trustees of the Township of Northfield in a meeting duly called and held on this 12th day of July, 2016.

**TOWNSHIP OF NORTHFIELD,
WASHTENAW COUNTY, MICHIGAN**

Marilyn Engstrom, Supervisor

ATTEST:

Angela Westover, Clerk

I, Angela Westover, Northfield Township Clerk, hereby certify as follows:

- A. The above Ordinance was passed by the Northfield Township Board of Trustees on the 12th day of July, 2016. The names of the members voting thereon and how each member voted was as follows:

Yeas:

Nays:

Absent

- B. A true copy of the above Ordinance was published in Ann Arbor News, a newspaper circulating within the Township, on the ___th day of ___, 2016, and;
- C. The effective date of the above Ordinance is the ___th day of ___ 2016.

NORTHFIELD TOWNSHIP BOARD

By: _____

Angela Westover, Clerk