

BOARD OF APPEALS - CITY OF COLUMBUS

VARIANCE DECISION FORM – GENERAL ZONING

Applicant: Lamps Landing

Applicant request: Reduction of side setback to 5.6 feet on the north side of Lot 18 in the Cardinal Heights Plat.

The BOA may only grant a variance if the applicant provides evidence that they meet all three legal standards below.

1. **Unnecessary hardship** (check area variance or use variance)
 - ☐ **For an area variance**, unnecessary hardship exists when, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience is not sufficient to meet the unnecessary hardship standard. (*Snyder v. Waukesha County Zoning Bd. Of Adjustment*, 1976).
 - ☐ **For a use variance**, unnecessary hardship exists only if there is no reasonable use of the property without a variance.

The literal enforcement of the ordinance standard(s) (**will / will not**) result in an unnecessary hardship because...

2. **The hardship must be due to unique property limitations** such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by nearby properties. Further, the entire property must be considered, if a code-compliant location(s) exists, a hardship due to unique property limitations **does not exist**.

The hardship (**is / is not**) due to unique conditions of the property because...

3. A variance may not be granted which results in harm to the **public interests**. The public interests are the objectives listed in the purpose section of the ordinance.

The purpose and intent of the zoning code is:

Sec. 114-3. - Purpose.

This chapter is adopted for the purpose of promoting the health, safety, morals, aesthetics and general welfare of the city.

Sec. 114-4. - Intent.

It is the general intent of this chapter to regulate and restrict the use of all structures, lands, and waters so as to:

- (1) Regulate and restrict lot coverage and the size and location of all structures to prevent overcrowding and to provide adequate sunlight, air, sanitation, and drainage;
- (2) Regulate population density and distribution to avoid undue concentration and to facilitate the provision of adequate public service and utilities;
- (3) Regulate parking, loading, and access to lessen congestion on, and promote the safety and efficiency of, the streets and highways;
- (4) Secure safety from fire, flooding, pollution, contamination, panic, and other dangers;
- (5) Stabilize and protect existing and potential property values;
- (6) Encourage compatibility between different land uses and protect the scale and character of existing development from the encroachment of incompatible development;
- (7) Preserve and protect the beauty of the City of Columbus, Wisconsin and environs;
- (8) Further the orderly layout and appropriate use of land;
- (9) Prevent and control erosion, sedimentation, and other pollution of the surface and subsurface waters;
- (10) Further the maintenance of safe and healthful water conditions;
- (11) Prevent flood damage to persons and property to minimize expenditures for flood relief and flood control projects;

(12) Provide for and protect a variety of suitable commercial and industrial sites;

(13) Protect the traffic-carrying capacity of existing and proposed arterial streets, highways, and collector streets;

(14) Facilitate adequate provisions for housing, transportation, water supply, stormwater, wastewater, schools, parks, playgrounds, and other public facilities and services;

(15) Facilitate implementation of municipal, county, watershed and/or regional comprehensive plans and plan components adopted by the city;

(16) For such purposes to divide the city into districts of such number, shape and area as are deemed best suited to carry out such purposes;

(17) Provide for the administration and enforcement of this chapter;

(18) Provide penalties for the violation of this chapter.

The variance (**will / will not**) harm the public interests because...

Order and Determination: The BOA member shall decide / vote on the application and direct the zoning department accordingly. The BOA member must refer to specific evidence when rendering a decision.

The application (**does / does not**) meet all three of the above tests and therefore the variance should be (**granted / denied**). The BOA is only allowed to grant a variance if the applicant provides evidence that they meet all three tests:

- 1) Ordinance standards will result in unnecessary hardship.
- 2) The hardship is due to unique conditions of the property.
- 3) The variance will not harm the public interests.

BOA Member Signature

_____ Date _____

Guiding Principles to Grant a Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

Parcel-as-a-whole. The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County*, 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

Self-imposed hardship. An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

Circumstances of applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

Financial hardship. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

Uniqueness of the property. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the BOA may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption. *Arndorfer v. Sauk County Bd. Of Adjustment*, 162 Wis. 2d 246, 469 N.W.2d 831 (1991).

Nearby violations. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

Objections from neighbors. The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

Variance to meet code. Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)