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To: Planning Commission
From: Chris Madigan, AICP
Date: June 15, 2022
Re: Variance Standards Text Amendment (ZTA22-002)

Commissioners,

Planning and Zoning staff recently began the process of initiating a zoning text amendment, for Section 36-137(C) of the Township Zoning Ordinance. Typically, this process does not involve the Zoning Board of Appeals. However, this specific section contains the seven standards by which Zoning Board of Appeals considers variance requests. As a result, staff felt it was appropriate to receive input from the Zoning Board of Appeals prior to the public hearing. The proposed variance standards were recommended for approval by the Zoning Board of Appeals.

Below, we have included the current standards, as well as the proposed standards. The current variance standards are acceptable, though staff feels that they are not as clear as they should be. The proposed changes, reduce the number of standards from seven to five and are closely aligned with the State Zoning Enabling Act. There are a few benefits we believe can be realized with this change. The first, we believe, is that the new standards will allow staff to better prepare reports which clearly and concisely indicate whether the variance request is worthy of approval. This should also help the board make stronger decisions based directly on the enabling legislation mentioned earlier. Finally, should the variance decisions made by the board be challenged in court, decisions based on the proposed standards are more defensible than those based on the current Township standards.

Staff believes, these standards will assist the Zoning Board of Appeals in making sound and defensible decisions. We are excited to recommend the proposed changes, and believe this represents a positive step forward for the consideration of variance requests. Staff recommends the Planning Commission make a motion to recommend approval of the proposed text amendment for Section 36-137(C) of the Township Zoning Ordinance.

Current Standards

- (1) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.
- (2) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.
- (3) That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.

- (4) That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.
- (5) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.
- (6) Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.
- (7) The requested variance is the minimum necessary to permit reasonable use of the land.

Proposed Standards

- (1) Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.
- (2) The variance will do substantial justice to the applicant, as well as other property owners.
- (3) A lesser variance than requested will not give 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 peculiar to the property 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 not been self-created by the applicant and/or the applicant's predecessors.