

Memo

To: Zoning Board of Appeals

From: David J. Waligora, AICP

Date: January 15, 2026

Re: **For Review/Discussion: Vacant Single Family Residential Substandard Lot Prescribed Procedure**

I would like to propose an alternative process for how the Community Development Department reviews dimensional variance requests when the subject parcel is classified as a substandard residential lot.

First, let's review what constitutes a substandard residential lot. Article 5.4 of the Ordinance defines substandard lots as follows:

Any lot which was of record at the time of the adoption of this Ordinance, that does not meet the requirements of Article 6 for lot area and width, may be utilized for single-family residences in zones permitting this use, provided that the setback and open space provisions of the Ordinance are met. (Also see Article 7.27 regarding non-conforming lots).

In reviewing Article 7.27, staff finds subsection B establishes criteria which are less stringent than standard variance criteria. Notably, it does not require the applicant to demonstrate a "practical difficulty," which is often a point of contention in many zoning cases. Staff interprets this omission to mean that the Zoning Ordinance recognizes the substandard lot as constituting a practical difficulty, which is a sensible accommodation for a single-family use/lot.

In discussions with Director O'Neil and Nick Spencer, it appears that the ZBA has frequently reviewed lakeshore properties that do not meet width and/or area standards. Historically, these cases have been evaluated using the standard variance criteria in Article 7.37. While that standard is generally appropriate for variance requests, which is very typically for all municipalities to do, but because the Ordinance allows for another mechanism to review these types of requests, I am proposing we utilize it.

The following is a comparison of the two standards for your review.

Article 7.27 - B	Article 7.37
<p>B. If all front, side, rear, and open space requirements cannot be met, no building permit shall be issued for a nonconforming lot, except with approval of the Board of Appeals after public hearing in accordance with Section 7.35 of this ordinance. The application to the Board of Appeals shall simply state, "Nonconforming Lot." The application shall be on forms established by the Township and shall include at a minimum, a drawing showing all proposed structures on the lot, all applicable setbacks, and areas designated for parking automobiles. The Board of Appeals shall permit the use of such nonconforming lot or lots if it finds that the following standards have been met:</p>	<p><i>General variances: The Zoning Board of Appeals may authorize a variance from the strict application of the area or dimensional standard of this Ordinance when the applicant demonstrates all of the following conditions "A – E".</i></p>
<p>i. The lot was legally established pursuant to all applicable provisions of Michigan law or White Lake Township ordinance.</p>	<p>A. Practical difficulty: A practical difficulty exists on the subject site (such as exceptional narrowness, shallowness, shape or area; presence of floodplain; exceptional topographic conditions) and strict compliance with the zoning ordinance standards would unreasonably prevent the owner from using the subject site for a permitted use or would render conformity unnecessarily burdensome. Demonstration of a practical difficulty shall have a bearing on the subject site or use of the subject site, and not to the applicant personally. Economic hardship or optimum profit potential are not considerations for practical difficulty.</p>
<p>ii. The construction that will result from the issuance of said permits will be in keeping with the general character of the neighborhood in which the construction will take place.</p>	<p>B. Unique situation: The demonstrated practical difficult results from exceptional or extraordinary circumstances or conditions applying to the subject site at the time the Ordinance was adopted or amended which are different than typical properties in the same zoning district or the vicinity.</p>
<p>iii. The proposed use will not have a significant effect on adjoining and nearby property owners.</p>	<p>C. Not self-created: The applicant's problem is not self-created.</p>

iv. The design of the proposed structure is appropriate for the area, width, and shape of the lot, and is designed in such a fashion as to provide adequate access for fire and other emergency vehicles.	D. Substantial justice: The variance would provide substantial justice by granting property rights similar to those enjoyed by the majority of other properties in the vicinity, and other properties in the same zoning district. The decision shall not bestow upon the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity (such as the supply of light and air, significant increases in traffic, increased odors, an increase in the danger of fire, or other activities which may endanger the public safety, comfort, morals or welfare).
v. The proposed design is consistent with the extent to which other developed lots in the subdivision have maintained the setbacks and other required provisions of this Ordinance.	E. Minimum variance necessary: The variance shall be the minimum necessary to grant relief created by the practical difficulty.
vi. The nonconforming lot shall meet all other requirements of this Ordinance, which requirements for the purpose of this Section shall be deemed to include reasonable provisions for automobile parking.	
vii. In no event shall the side yards be less than five (5) feet to permit fire equipment and other emergency vehicles reasonable access and further to prevent the spreading of fire; the Board of Appeals shall not have the right to vary this provision.	

The following table is not necessarily set up as a one-for-one comparison, but I felt presenting the standards in this way is appropriate for our conversation.

If you have doubts on if the ZBA has the authority to act in this manner, it is further supported by Article 7.36 – Powers of Zoning Board of Appeals Concerning Administrative Review and Variances. This is the Article which dictates exactly what the ZBA has the authority to do, such as interpret the ordinance, provide dimensional variances, etc.

B. Authorization. In hearing and deciding appeals, the Zoning Board of Appeals shall have the authority to grant such variances as may be in harmony with the general purpose and intent of this Ordinance, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done, including the following:

v. Permit utilization of substandard lots as regulated by Section 5.4.

In conclusion, I am not implying that the Township or the ZBA has acted improperly by not applying this provision of the Ordinance in past years. The process defined by Article 7.37 is established, vetted, and consistent with how most ZBAs throughout the state operate. However, Article 7.27 provides a unique treatment for residential properties. Director O'Neil and I have also conferred with the Township Attorney, who supported this approach. I am therefore presenting this information to the Board so that, the next time an application fits the substandard lot classification, the ZBA will be aware of the intended process. Ultimately, I believe a strong argument exists that Article 7.27 provides substantial justice to our citizenry and will make application review more streamlined for vacant substandard residential lots.

No action is required at this time other than to review this memo and consider its implications. We can continue this discussion at a future meeting, or you may contact me directly with any additional questions—my office is always open.

Respectfully submitted,

David J. Waligora, AICP