

## **AGENDA**

### **EAST GRAND RAPIDS ZONING BOARD OF APPEALS August 23, 2022 - 5:30 PM Community Center – Commission Chambers**

YouTube Livestream available at the following link (viewers are unable to comment via the livestream):

<https://bit.ly/2xXILvn>

1. Call to Order
2. Roll Call
3. Public Comment on Non-Agenda Items
4. Advanced Training Session
  - Clarifications of Variance Review Standards
  - How to Use Public Input
  - Making Motions
  - When Approval Conditions are Appropriate
  - Case Studies
5. Other ZBA Business
6. Next Regular ZBA Meeting: September 28, 2022 (pending agenda items)
7. Adjournment



CITY OF  
EAST GRAND RAPIDS

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JAY GIANOTTI, AICP  
ZONING ADMINISTRATOR

**MEMORANDUM**

TO:                      East Grand Rapids Zoning Board of Appeals  
FROM:                  Jay Gianotti, Zoning Administrator  
DATE:                  August 18, 2022

RE:                      **ZBA Advanced Training Session**

**Action Requested:**

That the ZBA hold an additional training session to review the roles, duties, and review standards of this commission.

**Background:**

At the request of the ZBA membership, the August 23 special meeting is devoted to a refresher on topics that the ZBA wished to have more information and clarification on. Topics that will be discussed include the following:

- Clarifications of Variance Review Standards
- How to Use Public Input
- Making Motions
- When Approval Conditions are Appropriate

In addition, a series of case studies will be presented to give the ZBA additional experience in hearing variance requests. This session will be facilitated by City Planning Consultant Paul LeBlanc, AICP. A hard copy of the presentation is attached to these materials for reference and to follow along during the session<sup>1</sup>.

As the August 23 special meeting will be devoted solely to this training session, minutes from the July meeting will be considered for review at the next regular ZBA meeting.

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<sup>1</sup> Please note that, due to animations that are programmed into the presentation, some of the materials in these slides may not be visible in this attachment.

City of East Grand Rapids, Michigan



**Zoning Board of Appeals**  
**Advanced Training**

August 23, 2022



**Overview –Balancing Interests**

The zoning process is intended to balance the principles of individual **property rights** with the protection of the **public interest**



**Zoning Board of Appeals**

- Primary function is to uphold the zoning ordinance requirements, except in unusual circumstances related to conditions of the **property**
- It is NOT the ZBA's job to help applicants find a way around ordinance because of **cost** or **inconvenience** or because of circumstances of an individual **property owner**



**Intent of Variances**

- Variance procedure needed because not all properties have same physical character
- Variances not intended to allow owner to avoid zoning compliance
- Variances address **uncommon circumstances related to property**
- Variances granted with little or no justification may encourage others to avoid compliance

**Variance Decisions**

- By law, decision must be based on **standards** in the zoning ordinance
- Variance should be the **exception**, not the rule – ZBA not there to disregard ordinance requirements
- If variance meets **ALL** standards, it **must** be approved
- If variance does not meet **ALL** standards, it **must be denied**
- Granting unwarranted variances shifts zoning policy away from PC and CC

**Non-Use Variance Standards**

Section 5.103 C states: "A variance from the provisions or requirements of this chapter shall be **authorized only upon an affirmative finding** by the board, based upon competent material and substantial evidence on the whole record, that the following criteria are satisfied:

- **Special conditions or circumstances** exist which are **peculiar to the land, structure or building** involved and which are **not generally applicable to other** lands, structures or buildings in the same district.

**Special Conditions or Circumstances**

An **exceptional** circumstance or condition exists on the subject site...

“Where by reason of the exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of the land, building or structure...literal enforcement of the requirements of this chapter would involve practical difficulties ”

*Keyword: “Exceptional”*

**Proposed Revision**

1. That there are practical difficulties in complying with the requirements of this Ordinance with respect to the dimensional characteristics of the property in question because of exceptional or extraordinary physical conditions involving land, a building or structure, or any of them. A practical difficulty may include the exceptional narrowness, shallowness, shape or area of land; exceptional conditions in the elevations of land; the presence of unbuildable areas such as wetlands or a floodplain; or other exceptional or extraordinary physical condition of the property. The exceptional or extraordinary condition alleged by the applicant shall apply only to the dimensional characteristics of the property but shall not apply to the applicant personally. An applicant's alleged economic hardship or potential for financial profit shall not be grounds for the granting of a dimensional variance.

- The special conditions or circumstances do **not result from the actions of the applicant.**

**Proposed Revision**

2. The practical difficulties in carrying out the provisions or requirements of this Ordinance shall not have been created by or resulted from the actions of the current owner or any previous owner of the property.

- Authorizing a variance will **not be of substantial detriment to the neighboring property** and will **not be contrary to the spirit and purpose of this chapter.**

### Proposed Revision

3. Authorizing a variance will not be contrary to the spirit and purpose of this chapter.

▪ A **nonconforming use** of neighboring lands, structures or buildings shall **not, in itself, be considered grounds** for granting a variance.

### Nonconforming Conditions

- Legally established
  - Structure
  - Lot
  - Use
- Ordinance changed or property rezoned
- "Grand-fathered"
- Not encouraged to be perpetuated

### Proposed Revision

4. A non-conforming use of neighboring lands, structures or buildings shall not, in itself, be considered grounds for granting a variance.

### Proposed Revision (New)

5. A dimensional variance, if granted, shall be the minimum necessary variance in order to grant relief from the practical difficulty alleged by the applicant.

### Deliberation

#### Rules for Public

- Degree of formality
- Comments through the Chair
- Limit speaking time
- Limit number of times speaking
- Spokesperson



#### Rules for Decision Makers

- Comments through the Chair
- Deliberate in the open
- Express opinions
- Use ordinance standards for decisions



Once the hearing is closed...keep it closed

### Purpose of Public Hearing

- Present information relevant to request
  - Drainage
  - Soil conditions
  - Topography
  - Visibility
  - Impact
- **Not** to show support or opposition (not a popularity contest)



### Decision Principles

- The Board of Appeals is bound by Ordinance **standards**.
- Property owners have certain property rights, within **limits of the ordinance**.
- Justification for variances must be based on **conditions of the land** -- not circumstances of the owner.
- It is NOT the ZBA's job to help find a way around Ordinance requirements because of **inconvenience**, or to "make the community better."

### Other Considerations

- If granted, would variance compromise the intended purposes of the regulation?
- How is this property different from others in same district or neighborhood?
- Is this situation likely to be encountered often?
- If granted, the number and extent of variances should be minimum necessary to grant relief
- Each case should be considered on its own merits (**not precedent**)

### Motions

- Motion Maker
- Request
- Action
- Conditions (if for approval)
- Finding of relationship to standards
- Motion Supporter
- Discussion
- Vote
  - Courts require "competent, material, and substantial evidence **on the record**"
  - "If it didn't get written down, it didn't happen!"

**Motions must be clear to everyone & in proper form**

### Conditions

May be attached to any affirmative decision and must be related to the standards of review.



*"If this condition was not attached to the decision, the standards of review would not be met and the request denied."*

### ZBA Decisions

- Decisions **run with the land**
- Decision **not final until minutes are signed by Chairman**
- Appeals of a ZBA decision go to **circuit court**
- Court review is **based solely on the record**

### Top 10 Reasons NEVER to Use

1. No one came to object
2. It's the only size they make
3. The Ordinance is too strict
4. This is what the Ordinance *really* meant
5. We have to give it to them or they'll leave
6. We gave this variance before
7. They already have a building permit
8. We know he'll do a good job
9. Looks good to me / won't hurt anyone
10. It'll make the area better



### Of every 10 dimensional variance requests...8 should be denied

Think About:

Rule of Thumb



- The hundreds of property owners who DID comply with the Ordinance.
- The hours of effort spent in developing the Ordinance.
- The effectiveness of your Ordinance if it's commonly known all you need to do is ask for a variance and it will be granted.
- The ability of the City to enforce its Ordinances if variances are readily granted.

### A Recap...

- Variances are based on *unique* conditions of the *property*.
- Variances *not* intended to let property owners *avoid compliance* with zoning
- Variance procedure *is* intended to recognize not all properties have same physical character
- Variances granted without justification may *encourage others* to avoid compliance
- Granting unwarranted variances has long-term effect of *shifting policy-making* to the ZBA and away from PC and CC

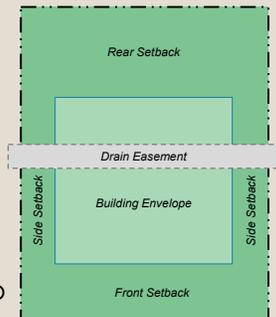
### Purpose of Ordinance Requirements

- Setbacks
  - Open space
  - Separation from adjoining property
  - Emergency access/fire safety
  - Security/privacy
- Lot Size/Width
  - Community character
  - Open space
  - Drainage
  - Property value
  - Flexibility

### Setback Variance Case Study

Facts:

- Lot purchased 3 yrs. ago
- Vacant
- City drainage easement acquired last year
- Owner wants to build home
- 35 ft. front setback reqd.
- 15 ft. setback variance requested

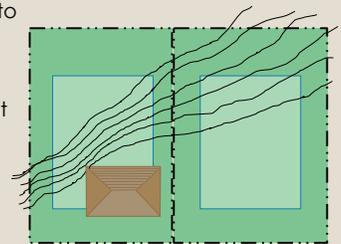


What do you need to know?

### Setback Variance Case Study

Facts:

- Vacant lot
- Topography slopes to rear
- Steeper ridge on neighbor's lot
- Neighbor given front and side variances
- Owner seeks front variance same as neighbor



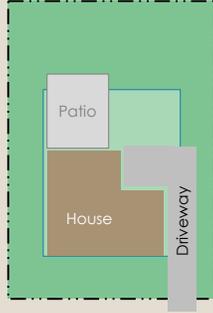
What do you need to know?

### Setback Variance Case Study

Facts:

- Owner doesn't have garage
- Most neighbors have 2 stall detached garages
- Owner wants lot coverage variance for 2 stall garage
- Seeking 48% (40% allowed)

What do you need to know?



### Discussion

