



**Michigan Association of Planning  
A Chapter of the American Planning Association**

*Excerpted from the MSPO Community Planning Handbook*

## **Variations**

### **Description**

A zoning variance is official permission to violate a specific ordinance requirement when certain findings have been made. Variances can be granted only by a zoning board of appeals. Variances are intended to provide administrative relief from a zoning provision which causes unnecessary hardship or practical difficulty for a property owner, due to unique circumstances of the property. The zoning enabling acts require a zoning board of appeals be set up to consider requests for variances.

There are two types of variances: use variances and dimensional (nonuse) variances. A use variance permits a use of land not otherwise permitted in that zoning district on that parcel. A use variance effectively rezones the parcel without prior approval of the planning commission and legislative body. They are considered inappropriate except in one instance- when the property cannot be reasonably used as zoned and other attempts to obtain local approval (e.g., via a special use permit or rezoning) have been denied. In this case, failure to grant a use variance could amount to a "taking." In Michigan, statutory authority to grant use variances is provided to cities and villages, but is not clearly authorized in townships and counties.

Nonuse variances are the most common variance requests. A nonuse variance addresses height, setback, and area requirements. These are often granted for parcels that have a unique characteristic, such as an irregular shape or a natural circumstance (steep hill, wetland, water, rock, etc.) which prevent property owners from building within established dimensional requirements.

### **Planning Considerations**

Michigan's zoning enabling acts provide that when considering a variance request, the Zoning Board of Appeals must insure that the "spirit of the ordinance is observed,

public safety secured, and substantial justice done.” The Michigan courts have added that variances should only be granted in the case of unnecessary hardship (use variances) or practical difficulty (nonuse variances). Applicants must demonstrate that their plight is due to (1) unique circumstances peculiar to that property and (2) that the problem is not self-created. Additional considerations are listed below:

Use variance:

- The property cannot reasonably be used for any of the uses permitted in the district.
- Granting the variance would not alter the essential character of the area.

Nonuse variance:

- Strict compliance with dimensional requirements would be unnecessarily burdensome or would unreasonably prevent the owner from using the property for a permitted purpose.
- Whether substantial justice would be served by issuing the variance as requested or by a lesser relaxation.

Property applied, these considerations make variances an approval that is intended to be hard to get. Variances should never be issued or denied for personal or sentimental reasons, nor should variances be liberally handed out. They must relate to characteristics of the property, not to the owner. If the zoning board of appeals is issuing many zoning variances, then they are either misusing their authority, or the ordinance has established inappropriate dimensional requirements in one or more districts, or both. Inappropriately-granted variances have the long term results of undermining the spirit of the zoning ordinance, the character of the zoning district, and the planning principles which zoning was designed to advance. Alternatively, if a petitioner’s problem is commonly shared by many others in the area, then the solution is probably to amend the ordinance to eliminate the inappropriate regulation, not issue variances.

### **Advantages**

- Provides relief to property owners who could not otherwise develop their property under existing zoning.
- Can prevent an unintentional “taking” of property without compensation.

### **Disadvantages**

- This authority is often misunderstood and misused.
- If variances are improperly granted, then the zoning ordinance and related public policies are undermined.

### **Limitations**

- Only applies to circumstances of practical difficulty or unnecessary hardships unique to a particular property.