

City of Muskegon Zoning Ordinance

Excerpted from Article XXV (Zoning Board of Appeals), Section 2502: Powers and Duties (emphasis given)

Nonuse or Dimensional Variances

The ZBA shall have the power to authorize upon appeal in specific cases, filed as required by this article, such nonuse or dimensional variances from the provisions or requirements of this chapter as will not be contrary to the public interest; but only in such cases where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the chapter would cause practical difficulty.

Where, by reason of the exceptional narrowness, shallowness or shape of a specific piece of property on the effective date of the ordinance from which this chapter is derived, or by reason of exceptional topographic conditions, or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this chapter would involve practical difficulties, unnecessary to carry out the spirit and purpose of this chapter, the ZBA shall have the power to authorize a variance from such strict application, so as to relieve such difficulty and so that the spirit and purpose of this chapter be observed and substantial justice done. In authorizing a dimensional variance, the ZBA may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of this chapter and in the public interest.

No such dimensional variance in the provisions of requirements of this chapter shall be authorized by the ZBA unless the ZBA finds, beyond reasonable doubt, that all the following facts and conditions exist:

- a. **That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district.**
- b. **That such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity.**
- c. **That the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest.**
- d. **That the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner.**
- e. **That the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.**
- f. **That the requested variance is the minimum action required to eliminate the difficulty.**

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Excerpted from Article XXV (Zoning Board of Appeals), Section 2502: Powers and Duties (emphasis given)

Use Variances

The ZBA shall have the power to authorize upon appeal in specific cases, filed as required by this article, such use variances from the provisions or requirements of this chapter as will not be contrary to the public interest; but only in such cases where, owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the chapter would cause unnecessary hardship.

The purpose and intent of this Ordinance is that every landowner in the City of Muskegon should enjoy a beneficial use of their property. A use variance is a process by which the City evaluates the allegation that there is no beneficial use, and can provide relief from the regulations by granting additional development potential to provide a beneficial use of the property. It is also the intent of this Section that such relief not increase the potential for damaging the health, safety, or welfare of future users of the property or neighbors that might reasonably anticipated if the landowner were permitted to engage in or construct the use proposed. Under no conditions shall a use variance be granted unless there is a finding of no beneficial use.

No such use variance in the provisions of requirements of this chapter shall be authorized by the ZBA unless the ZBA finds that all the following facts and conditions exist:

- a. **That the property could not be used (put to a reasonable use) for the purposes permitted in that zone district.**
- b. **That the plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.**
- c. **That the proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest.**
- d. **That the alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner.**
- e. **That the alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.**
- f. **That the requested variance is the minimum action required to eliminate the hardship.**
- g. **That the use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested.**
- h. **The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare shall be considered. A use that seriously threatens the health of future residents or neighbors is not a beneficial or allowable use.**
- i. **In no case shall a use that is a nuisance per se, or a use which in that particular location constitutes a nuisance, be granted as a use variance. Such uses are not legal uses of the land.**