

PREPARING FOR YOUR APPEARANCE BEFORE THE BOARD OF ADJUSTMENT

Legal Description of a “C” variance:

Where by **(a)** reason of exceptional narrowness, shallowness or shape of a specific piece of property, or **(b)** by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or **(c)** by reason of an extraordinary or exceptional situation uniquely affecting a specific piece of property, building or structure lawfully existing thereon, the strict application of any ordinance would result in a peculiar and exceptional practical difficulty to or exceptional and undue hardship upon, the developer.

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In other words, you must prove to the Board that there is something different or unusual about your particular piece of property (topography, physical features) or that a special situation exists that affects only your property. The other situation is that in which you must prove that the strict application of the ordinances would cause undue hardship upon you such as not permitting you to enjoy amenities commonly used by others in similar situations.

Questions to ask yourself:

What special conditions and or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district? (These special reasons shall not have resulted from the actions of the applicant.)

Is the variance requested the minimum variance that will make possible the reasonable use of the land, building or structure?

Questions the Board may ask you (be prepared to answer):

What other options have you tried, other locations that did not require a variance?

What type of landscaping is proposed to mitigate any affect your proposal will have on adjacent property owners?

Have you considered additional outdoor lighting?

Have you taken measures to minimize tree removal?

**ALL OF THE ABOVE SHOULD BE DESIGNED TO MINIMIZE THE EFFECT ON
NEIGHBORING PROPERTIES.**

General Planning Considerations

Go through the following information; determine which of the following pertains to your application and frame the testimony you plan to present to the Board around those particular facts.

Hardship C (1)

Peculiar and exceptional practical difficulties to, or exceptional and undue hardship from:

- a. Exceptional narrowness, shallowness or shape of a specific piece of property;
- b. Exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or
- c. Extraordinary and exceptional situation uniquely affecting a specific piece of property.

Flexible C (2)

- a. Application relates to a specific piece of property; or
- b. Advances purposes of the Municipal Land Use Law; or
- c. Variance can be granted without substantial detriment to the public good; or
- d. Benefits of the deviation substantially outweigh any detriment; or
- e. Variance will not substantially impair the intent and purpose of the master plan and zoning ordinance.

Self-inflicted hardship is not grounds for a variance. If a person with a lot sufficiently large for uses permitted in their zone sells a portion of his or her property to a neighbor then decides they want to put an addition on the side of their home but does not have a sufficient side yard, they are not entitled to a variance on grounds of the hardship they brought on themselves. In contrast if the area or width of the lot was reduced because land was taken for street widening, the hardship was not self-created and they may be entitled to a variance.

Personal hardship is not grounds for a variance. The hardship must relate to the physical character of the property. The special conditions and circumstances must be “peculiar to the land, structure, or building involved.” You must illustrate to the Board how your hardship is created by the physical character of the property including dimensions, topography, or soil conditions, or by other extraordinary situations or conditions of your property.

Economic hardship in and of itself is not grounds for a variance. It may be considered as an element, but there must be other strong and compelling considerations as described above.

The granting of the variance request will not give the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

That literal interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the zoning ordinance and would work unnecessary and undue hardship on the applicant.

The granting of the variance will be in keeping with the general intent and purpose of the zoning ordinance and zone plan and that such variance will not cause substantial detriment to the public welfare.

The Public Hearing

1.) At the hearing you will be asked (under oath) to describe to the Board the development and /or changes you proposed to make and why you are entitled to the requested relief under the Municipal Land Use Law as herein described. The burden of proof is upon you, the applicant to establish the elements of your case. The Board will make a determination on your case based upon the findings of fact and the proofs according to the law.

2.) The applicant must appear in person with your professionals, if any, at the public hearing(s). Any applicant, other than a corporation, may present their own case without representation by legal professionals.

3.) Your neighbors or other interested parties will be given an opportunity to ask you questions regarding your testimony and later the opportunity to make a statement about your application.

4) When your application has been considered fully, the Board will made a determination based upon testimony from the applicant, professionals, and witnesses plus reports and reviews by various departments and outside agencies having jurisdiction over the matter. The Board Attorney will be asked to prepare a resolution of approval or denial. The resolution will be memorialized (acted upon) at the following meeting. *You may submit your building permits upon approval by the Board of Adjustment (if you haven't already done so) however the permits will not be released until the resolution is memorialized at the next meeting.*

5. Proof that tax and sewer is up-to-date is required. All application fees and escrow deposits must be paid up-to-date in order to be heard.

THESE INSTRUCTIONS AND SUGGESTIONS ARE AN ATTEMPT TO ASSIST THE APPLICANT AND ARE NOT INTENDED TO BE A COMPLETE LIST OF REQUIREMENTS PURSUANT TO THE MUNICIPAL LAND USE LAW OTHER STATE STATUTES OR OTHER APPLICABLE ORDINANCES OF THE TOWNSHIP OF MORRIS. THE SOLE RESPONSIBILITY OF PRESENTATION OF THE APPLICATION AND PROCEDURAL REQUIREMENTS IS UPON THE APPLICANT.