

VILLAGE OF HOWARDS GROVE

Board of Zoning Appeals Hearing Procedures

First, about the Board of Zoning Appeals (BZA) itself: The Board is pledged to insure that the intent of Howards Grove's Zoning Ordinance is preserved, that public safety is secured, and that substantial justice is done. It is composed of ordinary citizens who have devoted considerable time to understanding the Ordinance and under what circumstances variances to it may lawfully be granted.

Its members are bound to being impartial and to abiding by the Ordinance and by state statutes and case law that govern the granting of variances. They do not take their responsibilities lightly, for they know that granting a variance is essentially granting a citizen permission to break the law. Three members of the Board must vote the same way in order for a dimensional-variance decision to be binding, four members for a use variance. Decisions of the Board are appealable to the Circuit Court.

Second, what happens at Howards Grove BZA meetings: The Chairperson of the Board announces the cases that are to be heard in the order determined by the agenda.

In each instance, the Zoning Administrator or Designated Representative describes the case, emphasizing those factors he/she believes have made an appeal necessary. The Board may ask questions of the Zoning Administrator to be sure it understands the facts of the case as he/she sees them. Any communications that may have been received relevant to the case are read at this time.

Then the applicant (or someone representing him/her -- an attorney, architect, builder, etc.) presents his/her case. The Board will ask the applicant or his/her representative questions as well.

After that, others wishing to present evidence to support the applicant's case may do so.

Next, those opposed to the variance requested may testify.

Then the applicant may make his/her closing arguments.

Any number of persons may testify pertaining to a particular case, but the Board will likely advise a group of people of like mind on an issue to appoint one of its members to be its spokesperson. The BZA chairperson, also in the interest of time, may limit testimony to new information.

After the Board is satisfied it has received all the relevant testimony it can expect, the hearing is closed and deliberation begins. The Board may or may not call for further testimony after the hearing is closed.

The Board tries to reach a decision before it adjourns but may find it needs more evidence before it can decide on a case. Whatever the situation, the Board will eventually vote on the variance requested, grant it with conditions, grant it in part, postpone a decision for up to 60 days, or deny the request altogether.

Third, how to prepare for the hearing: The questions in the application are based upon the Zoning Ordinance itself. Information provided is important to making a case. It should be as complete and clear as possible. Anything less, risks the Board having to delay its decision.

An applicant will benefit from reading carefully those sections of the Ordinance that pertain to his/her case, being sure not to overlook the section on variance procedures (chapter 13).

Also, an applicant would be wise to organize his/her **oral testimony** according to the questions on the application, elaborating on the points he/she made there. This will streamline the process because the Board will almost certainly come to the hearing prepared to base many of its questions upon an applicant's written comments.

Before and during the oral testimony, it is important to bear in mind that the Board is committed to being impartial, to dealing justly in each instance, applying the standards of law consistently, balancing the rights of the applicant with the welfare of the community. Thus, the more information it has -- and the more clearly that information is presented -- the better job the Board will be able to do.

In that regard, an applicant should not be alarmed if some of the Board's questions seem to be pursuing some point that seems not to favor the applicant's position nor be surprised if some of its questions seem to be "making the case" for the applicant. It is all in the pursuit of getting at the facts, of finding an appropriate basis for a decision.

VILLAGE OF HOWARDS GROVE

Board of Zoning Appeals Application for a Dimensional/Non-Use Variance

The plan you have proposed for your project requires a variance from the Village of Howards Grove Zoning Ordinance as provided by the Village of Howards Grove Zoning Ordinance (chapter 13). This application, filled out completely, along with the application fee, twelve copies of a site plans and other requested information and materials, must be submitted to the Village Clerk at least 45 days prior to your hearing date. The Board of Zoning Appeals Application fees are listed on the application form.

Your completion of this application (no alternatives will be accepted) and appearance at a public hearing are necessary for the Board to act upon your request for a zoning variance. Depending upon the information the Board receives at the hearing and its application of the law, your request for a variance may or may not be granted. (You may use the backside of this application or attach extra sheets if you wish. You are encouraged to include photographs and illustrations to support your case.) Fees are non refundable if variance is not granted.

Print or type

Applicant name and address _____

Owner name and address _____

Daytime phone

Night phone

Daytime phone

Night phone

Applicant's interest in property: _____

Current zoning of subject property: _____

Address of property involved in this request: _____

Variance(s) requested: _____

The following six questions are based upon the six tests for granting non-use/dimensional variances. Be aware that in every instance, each of the six tests MUST be satisfied in order for the Board of Zoning Appeals to grant a variance. Thus, it is in your best interest to answer each of the six questions in this application clearly and completely, with as much detail as necessary to support your case for practical difficulty, which must be proven in order for the Board to grant a variance.

Practical difficulty is a legal term. The Board concludes a valid case has been made for the existence of a practical difficulty when it finds:

- 1. That a unique circumstance or condition relative to your land prevents you from enjoying the use of your property as others in the same zone district are generally able to do.
2. That the requested variance: a. will not be significantly harmful to your neighbors. b. is consistent with the intent of the Ordinance. c. was not made necessary by anything you did in the first place.

The Board will likely use the six questions in this application to guide its inquiry into your case. Each is written first with the legal wording, then a brief commentary to help you understand the kind of information required. A variance cannot be granted merely as a convenience to the property owner.

1. What are the exceptional or extraordinary circumstances or conditions that apply to your property, circumstances and conditions that do not generally apply to other properties in the same zoning district as your property?

The first thing the Board will want to know is, **what makes your parcel, your property, your land, so unusual** -- say in its size or shape or location or other physical characteristics? You must show that you truly have a practical difficulty, one not shared generally by others in your zone. ("Zoning district," by the way, means all other property owners in R-1, R-2, B, I, etc. -- not just your immediate neighbors.) Some examples of unique circumstances related to land are extreme narrowness, exceptional shallowness, unusual shape, unusual topographical characteristics (like a wet land, large boulder, or deep ravine), or unusual development in adjacent property. So be sure you explain here what the problem is with your *land*, something that is not the case with most other parcels in your zone district.

2. If you are not granted this variance, will others in your zoning district be able to enjoy substantial rights and privileges that you are unable to?

The Board will also need to be convinced that the nature of your parcel does **not allow you to do** with your property **what others** in your district **are rightfully able to do**. If you claim your lot is too narrow to allow you to build a garage without a variance, yet other residents in your zone district with the same size lots are able to do so, you would not have a strong case for a variance.

3. Is there evidence that the reason(s) for this variance request goes beyond the possibility of increased financial return for the applicant?

While **economic gain** is another factor the Board takes into consideration, an applicant's understandable wish to increase his or her financial return is not in itself sufficient basis to claim practical difficulty. In other words, financial gain by itself is never sufficient cause to grant a variance.

4. Will granting this variance be significantly detrimental to your adjacent neighbors and surrounding neighborhood?

Your neighbors' feelings about your request for a variance are important, but applicants should realize that neighbors' signatures on a petition or testimony at the hearing is not necessarily sufficient in itself to convince the Board that granting the variance will not be **detrimental to the neighborhood**. Variances go with the land, not with the current land owner. Consequently, the Board may be inclined to take a broader and longer view, one that may be more impartial than do the neighbors.

5. Will granting this variance harm the intent and purpose of this Ordinance?

The Board must consider whether or not granting a variance will hinder the community in achieving the very **goals and objectives the Ordinance is trying to accomplish**. Statements of intent are found at the beginning of each Ordinance chapter. You should explain *how* your application is consistent with and does not violate the intent of the particular chapter(s) that apply to it; merely saying it does not is not enough. For example, if you want to divide an R-1 lot with 100 feet of frontage into two parcels with 50 feet of frontage each, to be permitted to do so, you will be expected to explain how this does not compromise the Ordinance's intent.

6. Has the immediate practical difficulty been caused by anything the applicant him- or herself has done?

So-called “self-created” practical difficulties may not be used to justify granting a variance. Some examples of such difficulties are purchasing property that is nonconforming, trying to undo the effect of a previously granted variance, or having previously constructed/placed structures in a location which hinders your plan for the property.

PLEASE PRINT OR TYPE

This application shall also include a drawn to scale site plan(s) with the following information provided. The Zoning Administrator may authorize omissions as noted in the left margin.

- a) Applicant identification.
- b) Street address.
- c) North arrow.
- d) Size of property in sq. ft or acre.
- e) Property lines and dimensions.
- f) Location of significant natural features including wetlands, steep slopes, flood-prone areas, unique vegetation, any other unusual land features.
- g) Location of all structures on the land with locating dimensions and building dimensions.
- h) Lot lines and all structure within one hundred feet (100') of the site's property lines including driveways and other access points along both side of the street where access to the site is proposed.
- i) Identification of all rights-of-way and easements pertaining to the subject land and adjoining parcels.
- j) Copy of latest surveyor's engineering drawing.

The undersigned hereby certifies the information given in this application and supplementary materials is true and correct to the best of their knowledge. It is also understood that any information requested, and not included with the application, may cause delays in making a decision on the variance requested.

I hereby grant permission for members of the Village of Howards Grove Board of Zoning Appeals to enter the above described property (or as described in the attached) for the purposes of gathering information related to this application/request/proposal. (NOTE TO APPLICANT: This is optional and will not affect any decision on your application.)

YES NO

Signature of Applicant _____ Date _____

This application, **twelve (12) copies** required, and filing fee of \$175 received by:

Administrative Official _____ Date _____