

City of Brighton

Guide to Variances and The Zoning Board of Appeals

So you think you need a variance? What should you do about it? Let us be your guide to the process of filing for a variance with the Zoning Board of Appeals:

What is a variance?

A zoning variance is official permission from the **Zoning Board of Appeals (ZBA)** to violate a specific ordinance requirement, in a given instance where **practical difficulty** or **unnecessary hardship** is proven when the ordinance is properly enforced. Since a variance involves re-interpretation of the law, it is important to ask oneself if a variance is truly needed. Can you live reasonably within the ordinance?

A **use variance** allows a use of land not permitted within the ordinance. Use variances are rare and only granted if the property cannot reasonably be used as zoned.

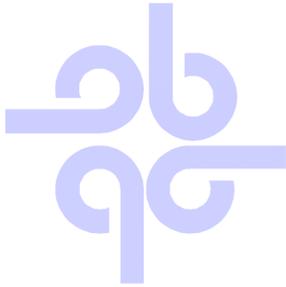
Non-use variances consider alterations of various aspects of the property including height, setback, and area requirements. Non-use variances are considered in light of unique land characteristics that prevent meeting the zoned requirements. Non-use variances occur more frequently than use variances.

A **sign variance** allows for a location or type of sign beyond what the strict interpretation of the ordinance allows when there is **undue or unnecessary hardship** to the applicant. Chapter 66, Section 63 of the City of Brighton Code of Ordinances deals directly with sign variances.

What is the Zoning Board of Appeals?

The **Zoning Board of Appeals**, or **ZBA**, is a quasi-judicial body that interprets complaints received from any local property owner who feels a particular ordinance is unfairly applied due to unique circumstances regarding the property. The ZBA may also interpret the zoning map should questions arise, and make rulings regarding sign variances. The Michigan Zoning Enabling Act and Chapter 2, Article 3 of the City of Brighton Code of Ordinances grant the City of Brighton ZBA's powers and duties. The Brighton ZBA is composed of seven (7) members appointed for staggered three year terms.

The ZBA must uphold the standards of the ordinance and the character of the city.



When is a variance necessary?

A variance may be necessary if a property owner is unable to reasonably use land for any of its zoned purposes, or make improvements to the property, due to unique circumstances regarding the property.

Application Procedure:

A property owner, or a third party on behalf of the owner, may apply for a variance.

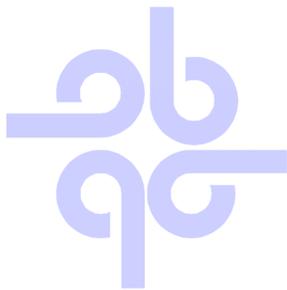
In the application explain clearly and concisely why you need the variance, and be specific to how you meet the criteria the ZBA uses.

Provide all the necessary materials to the Board in advance. Anything that will help them see your point of view should be provided before the day of the meeting (or a vote may be postponed to the following month).

Be aware of, and submit your application by the deadline for the upcoming monthly meeting.

Tips for a successful variance:

1. Understanding the zoning ordinance, and how it applies to the specific case at hand, is the best test of if you have a viable reason to be granted a variance. Is it possible to live within the ordinance? Variances may not be granted to everyone who applies.
2. Speak with those who will be directly affected by the variance, especially neighbors. If there are any objections, be sympathetic and try to understand why they may feel as they do.
3. Local planning and zoning officials can provide valuable advice on the variance process, as well as aid you in making sure you have a complete application.
4. Understand how the ZBA works, and the criteria by which the board will judge your application. Make sure the variance is based on unique aspects of the property and not your personal desires as a property owner, or financial reasons.
5. Supply the Board with any and all information that will prove your need for a variance prior to the date of the meeting. It is better to submit all relevant drawings and documents with your application. Any new and complex materials presented the day of the hearing may end up postponing your decision by another month, which can be costly to a project.



ZBA Decision Criteria:

For a Non-use Variance:

A **non-use variance** (signs, setback or lot area, height) is reasonable given ALL of the following conditions:

- Applicant must prove **practical difficulty**: the special conditions of the property that keep the owner from using the property for a zoned use or that will cause an unnecessary burden. Practical difficulty can have nothing to do with the applicant's financial, physical, or personal preferences.
- The variance must not harm the public health, safety, or welfare.
- The variance must not affect the value of the adjacent properties in a negative manner. It must protect the integrity of the community and the ordinance.

Examples of non-use variances:

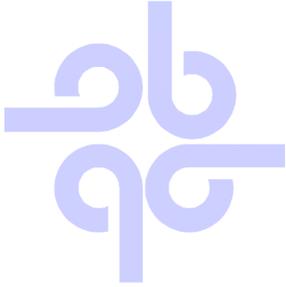
Building an accessory structure (like a garage or storage shed) closer to the property line than is allowed.

Putting an addition on a house that violates the required rear yard setback.

For a Use Variance:

A **use variance** (authorizing a use of land not otherwise permitted by the zoning ordinance) is reasonable given the following criteria:

- The ZBA may permit a variance in **use** or **location** of a building on any lot abutting a different zoning district, provided that the use or location will not have an undesirable effect on the more restricted district.
- The yard requirements must not be less than 50 percent of the requirements for the more restricted district.
- The variation shall not extend more than 50 feet into the more restricted district.



ZBA Criteria for Signs:

For a Sign Variance:

A **sign variance** (location or type of sign) is reasonable given **ALL** of the following:

- The literal interpretation and strict application of the ordinance would cause undue and unnecessary hardship to the applicant because of unique or unusual conditions pertaining to the building or parcel of property.
- The variance would not be materially detrimental to the property owners in the vicinity.
- The unusual conditions applying to the specific property do not apply generally to other properties in the city.
- The granting of the variance will not be contrary to the general objective of this chapter of moderating the size, number and obtrusive placement of signs and the reduction of clutter.

If there is insufficient evidence of an unnecessary hardship the Board may also approve a sign if

- The sign is of particularly good design or taste.
- The property is of particularly good design and the Board is considering the location, the character and other features of the proposed sign within the context of the property and with the public interest in mind.

The ZBA must always consider the integrity of the original ordinance when granting any variance.

Burden of proof always lies with the applicant.

More information can be found in the Code of Code of Ordinances, located on brightoncity.org.

Prior to the Meeting:

Why is the deadline for submittal so far in advance of the meeting?:

Upon completion of an application the City of Brighton Planning and Zoning Department must put out a public notice of the variance request prior to the meeting, in a newspaper or other publication of general circulation. The City must also personally notify the owners of the property in question and all property owners within 300 feet of the property by 15 days in advance of the hearing.

ZBA members will likely need to visit the site prior to the scheduled meeting on an individual basis.

At the Meeting:

Arrive early and well prepared. Listen carefully to the advice of Board members and answer all questions to the best of your ability. Sometimes the key to getting your variance accepted is being willing to compromise.

You may address the Zoning Board of Appeals stating why you feel your variance meets their criteria. If you are uncomfortable speaking you may have a third party associated with the project address the Board on your behalf. It is encouraged that you speak and leave only the technical questions to the third party.

Be respectful of the Board members.

Explain concisely why your request meets the requirements for granting a variance.

The public will be given a chance to address the board with their support, questions, or concerns. You will have an opportunity to speak again in response to these comments.

Postponements:

If the Board feels they do not have adequate information to make a decision they may decide to postpone a vote to the next meeting and wait to receive the required materials.

If it appears the Board is not going to vote in your favor you may also choose to request that your variance be postponed to the next meeting, so that you may submit revised plans.

Voting:

In all other cases the Board will take a vote on whether they feel your variance meets the appropriate criteria. The Board may choose conditional approval, meaning they will pass a variance in the case that certain conditions are met. If the conditions of the Board are not met the variance is no longer considered approved and you could be subject to enforcement actions.

If your variance is granted you must still apply for the appropriate permits to begin your project.

If your variance is denied but you still wish to pursue the project you may revise your plans so that a variance is not necessary, or revise your plans enough to meet the criteria set by the ZBA, and then reapply for another variance.

Brighton Zoning Board of Appeals Meeting Schedule 2019

Meetings are held the Second Thursday of every month at 7:00 P.M. All meetings are held in the City Council Chambers at 200 North First Street, Brighton, MI 48116.

For questions please contact the Planning and Zoning Department:

200 N. First Street Brighton, MI 48116,

(810) 844 5149

Current Zoning Board of Appeals Members:

Douglas Angst, Chairperson

David Chaundy, Vice Chairperson

Russ Gottschalk

Jordan Genso

Laura Lomik

David Senak

Alicia Urbain

Renee Pettengill

Barbara Curtis, Alternate Member

Meeting Dates

January 10, 2019

February 14, 2019

March 14, 2019

April 11, 2019

May 9, 2019

June 13, 2019

July 11, 2019

August 8, 2019

September 12, 2019

October 10, 2019

November 14, 2019

December 12, 2019

