

GENERAL INFORMATION

Subject

- Request - Text amendment modifying TMC§1111.1705
Variances
- Applicant - Toledo City Plan Commission
One Government Center, Suite 1620
Toledo, OH 43604

STAFF ANALYSIS

The Plan Commission is requesting a study of variances and possible text amendment to TMC§1111.1705 Variances. The International Code Council describes a variance as a relaxation of the strict provisions of the Zoning Ordinance. A variance is usually granted when the property owner can demonstrate that existing regulations present a practical difficulty in the use of the property. They require thorough examination of the subject property in addition to any potential impacts on the surrounding community. The applicant must demonstrate a unique hardship or practical difficulty that justifies the need for a variance. This process ensures that the integrity of the community’s Zoning Plan is upheld, while also providing flexibility for property owners. Variances are to be granted occasionally, providing a safety valve that alleviates unique hardships encountered by a property owner.

The variance procedures are not intended to permit a use in a Zoning District that is not otherwise allowed in that district, nor may the variance procedures be used to waive, or otherwise circumvent a condition of approval or requirement imposed by another decision-making body. The Board of Zoning Appeals reviews all variance requests and makes a decision based on the criteria set forth in TMC§1111.1705. Zoning variances shall only be approved when the Board of Zoning Appeals finds substantial evidence in the official record to support all the following findings:

- A. Unnecessary hardships or practical difficulties apply to the subject land, buildings or uses which are not generally applicable to other land, buildings, structures, or uses in the same zoning district;
- B. The undue hardship or practical difficulties are not the result of the actions of the property owner or applicant, their agent, employee, or contractor;
- C. Granting the requested variance will not result in advantages or special privileges to the applicant or property owner that the Zoning Code denies to other land, structures, or uses in the same district, and that the variance is the minimum variance necessary to provide relief;
- D. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance;

STAFF ANALYSIS (cont'd)

- E. The variance is not inconsistent with the stated purpose and intent of this Zoning Code (See Section 1101.0400);
- F. Allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Zoning Code and the individual hardships or inconveniences that will be suffered if the variance request is denied; and
- G. The variance is not an after-the-fact approval of an intentional violation.

In many instances, variances granted are based on the discretion of the Board of Zoning Appeals where the variance request has merit and meet some of the approval criteria. Although variance requests are required to meet all the above approval criteria, it is challenging for these requests to meet all the seven (7) approval criteria especially in instances where they do not apply. Hence, the request to establish a minimum number of approval criteria under TMC§1111.1705 that all variance requests must meet in order to be approved. Additionally, criteria F poses a challenge in clearly defining the “substantial justice” hence the request to replace it with a new criterion listed in exhibit B.

The Zoning Codes from other cities were all similar in their regulations regarding criteria for approving variance requests. Applicants requesting a variance from the Zoning Code in cities such as Columbus, Cincinnati, Cleveland and Akron must demonstrate that the requests meet the approval criteria. However, it does not specify if they needed to meet all or a specific number of the approval criteria. Whereas, City of Perrysburg Board of Zoning Appeals approved variances if the request met five (5) of the seven (7) approval conditions.

Based on the review of variance approval criteria in Ohio Cities and the challenges and history of Board of Zoning Appeals variance approvals, the staff recommends amendment of the variance approval criteria under TMC§1111.1705 in order to streamline the variance approval process. Variance requests shall not meet all the approval criteria set forth in TMC§1111.1705 but at least four (4) to ensure consistency.

STAFF RECOMMENDATION

The staff recommends that the Toledo City Plan Commission recommend approval of M-2-24, a text amendment modifying TMC§1111.1705 Variances for the following reason:

- 1. The proposed text amendment is in alignment with the stated purpose of the Zoning Code and ensures safety of Toledo resident.

ZONING TEXT AMENDMENT
TOLEDO CITY PLAN COMMISSION
REF: M-2-24
DATE: July 11, 2024
TIME: 2:00 P.M.

REF: M-2-24. . . July 11, 2024

ZONING AND PLANNING COMMITTEE OF
CITY COUNCIL

DATE: August 13, 2024

TIME: 4:00 P.M.

ET

Two (2) Exhibits

**Exhibit “A”
Existing**

1111.1705 Approval Criteria.

Zoning variances shall only be approved when the Board of Zoning Appeals finds substantial evidence in the official record to support all the following findings:

A. Unnecessary hardships or practical difficulties apply to the subject land, buildings or uses which are not generally applicable to other land, buildings, structures, or uses in the same zoning district;

B. The undue hardship or practical difficulties are not the result of the actions of the property owner or applicant, their agent, employee, or contractor;

C. Granting the requested variance will not result in advantages or special privileges to the applicant or property owner that the Zoning Code denies to other land, structures, or uses in the same district, and that the variance is the minimum variance necessary to provide relief;

D. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance;

E. The variance is not inconsistent with the stated purpose and intent of this Zoning Code (See Section 1101.0400);

F. Allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Zoning Code and the individual hardships or inconveniences that will be suffered if the variance request is denied; and

G. The variance is not an after-the-fact approval of an intentional violation.

(Ord. 170-04. Passed 3-23-04.)

**Exhibit “B”
Modifications**

(Additions in italic highlight. Deletions in bold strikethrough.)

1111.1705 Approval Criteria.

Zoning variances shall only be approved when the Board of Zoning Appeals finds substantial evidence in the official record to support *at least five of* ~~at~~ the following findings:

A. Unnecessary hardships or practical difficulties apply to the subject land, buildings or uses which are not generally applicable to other land, buildings, structures, or uses in the same zoning district;

B. The undue hardship or practical difficulties are not the result of the actions of the property owner or applicant, their agent, employee, or contractor;

C. Granting the requested variance will not result in advantages or special privileges to the applicant or property owner that the Zoning Code denies to other land, structures, or uses in the same district, and that the variance is the minimum variance necessary to provide relief;

D. The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance;

E. The variance is not inconsistent with the stated purpose and intent of this Zoning Code (See Section 1101.0400);

~~F. Allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Zoning Code and the individual hardships or inconveniences that will be suffered if the variance request is denied; and~~

F. Granting this request will not change or alter the overall image and character of the neighborhood, or introduce new materials or colors that are incompatible with the neighborhood; and

G. The variance is not an after-the-fact approval of an intentional violation.