

# ZBA VARIANCE JUSTIFICATION INFORMATION

## 1. Why do I have to provide these answers?

To be sure a **Variance** is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient. Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the Zoning Board of Adjustment holds a quasi-judicial hearing and considers the evidence presented.

## 2. How do I answer these questions?

The applicant must be prepared to explain to the Board what hardship or unusual characteristics of their property warrant a variance from the Zoning Ordinance, e.g. the unusual or unique characteristics of your property as compared to other properties in the same zoning district that makes it difficult for you to use your particular property in compliance with the Zoning Ordinance. Financial difficulties or gains, health problems or any self-created hardships do not justify the receipt of a variance from the Zoning Board of Adjustment.

- **Physical Characteristics of the Property**

- Hardship relates to the physical characteristics of the property, not the personal circumstances of the owner or user, and the property is rendered unusable without the granting of a variance. Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show they meet all of the standards.

- **Unique Characteristics.**

- The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site. By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate.

- **Hardship Not Self-Imposed.**

- Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. The hardship must not result from actions taken by the applicant or property owner.
- So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created.

- **Financial Gain Not Only Basis.**

- Financial gain of the property owner cannot be the sole basis for granting the variance.

- **No Injury to Neighboring Property.**

- The granting of the variance will not be injurious to other property or improvements in the area, impair an adequate supply of light and air to adjacent property, or substantially diminish or impair property values within the area.

- **No Harm to Public Welfare.**

- The granting of the variance will not be detrimental to the public welfare, increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of the City of Birmingham, and will not substantially impair the intent and purpose of this Ordinance.