

## WHAT IS A VARIANCE AND HOW CAN I GET ONE?

A Zoning Ordinance is a municipal law that regulates the use of land; permission to vary from these regulations is called a variance. The City of White Cloud Zoning Board of Appeals (ZBA) is appointed by City Council and is the only entity that can grant variances. They follow the zoning ordinance and use the criteria from Chapter 17 Section 17.07 A. Items 1 thru 7 to determine if a variance should be granted. Per the ordinance, the applicant must meet **ALL** of this criteria.

Variances should only be granted if the applicant provides compelling evidence that they meet the standards in the ordinance. The need for a variance needs to be unique to the property, not a condition unique to the applicant or their use of the property. The ZBA only grants variances in those special circumstances when there are unique conditions on a property.

### ***From the City of White Cloud Zoning Ordinance Chapter 17 Section 17.07***

A. Non-Use (Dimensional) Variances: The ZBA may authorize upon written application in specific cases variances from the terms of this Ordinance where, owing to special conditions related to the applicant's property, a literal enforcement of the provisions of this Ordinance would result in a practical difficulty to the applicant. A variance from the terms of this Ordinance shall not be granted by the ZBA unless and until a written application for a variance is submitted and the ZBA finds that all of the following standards are met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same Zoning District. Exceptional or extraordinary circumstances or conditions include:
  - a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter;
  - b. By reason of exceptional topographic conditions or other extraordinary situation on the land, building or structure;
  - c. By reason of the use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this Ordinance would involve practical difficulties; or
  - d. Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.
2. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations.
3. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.
5. The variance will not impair the intent and purpose of this Ordinance.
6. That the immediate practical difficulty causing the need for the variance request was not created by any affirmative action of the applicant or the applicant's predecessors in title.
7. That the reasons set forth in the application justifies the granting of the variance and that the variance is the minimum variance necessary

**Applications for a variance go through a public process.** Neighbors are notified and the request is posted in the newspaper. A public hearing is held at the ZBA meeting and those in attendance are given an opportunity to comment on the application. Comments may also be given in writing.

## **OTHER IMPORTANT INFORMATION**

- ❖ **A variance is permission to vary from the ordinance requirements.** The Board does not make the rules; they enforce them. Or in unusual or unique situations where the rules cannot be practically applied, they evaluate requests to vary from the rules. A variance does not change or eliminate the rules; it is just special permission to vary from them in unique cases.
  - ❖ **A variance is not based on precedent.** Each case is unique and considered on its own. It does not matter if another neighbor got a variance, the case must be evaluated individually.
  - ❖ **It is not up to the Board (or staff) to present the case for the applicant,** nor does the Board need to find a way for the applicant to do what has been requested.
  - ❖ **The term “practical difficulty” means that the problem is a practical or physical problem related to the land.** It is of the land and not a difficulty or inconvenience for the applicant. Variances are granted to land, not people.
  - ❖ **The problem that makes following the ordinance impractical should be unique to the property,** not just a condition that is unique to the owner.
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- ❖ **The practical difficulty cannot be created by the applicant’s actions.** The applicant cannot have created their need for a variance. The property may have been created or developed before the rules were established or was the result of a necessary government action such as a road widening.
  - ❖ **The variance would not be significantly detrimental** to the adjacent property and the surrounding neighborhood.
  - ❖ **If a variance is warranted by the criteria, it can only be granted in the minimum amount needed** to “fix” the parcel’s problem. Variances cannot be granted for any more than needed.
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- ❖ **ALL the ordinance criteria must be met.**
  - ❖ **Financial hardship is not sufficient justification.** Being restricted to a “less profitable” use of the property is not sufficient to justify a variance. Cost to the owner, a particular person’s idea of “what looks better”, or “what makes sense to me”, are not sufficient to meet the criteria.
  - ❖ **Personal hardship is not grounds for a variance.** The special conditions have to be particular to the property, not to its owner. Some special or unique conditions may be the property’s shape, dimensions, soils, or topography.
  - ❖ **Getting a variance from the zoning ordinance rules does not exempt you from getting any other required permits** and permissions (ie. Building codes, Drain Code, etc.)