



MEMORANDUM

To: Mayor and Members of the Board of Aldermen
Brittany Gillett, City Administrator

From: Bryson E. Baker, P.E.

Date: July 1, 2022

Re: Board of Adjustment

At the June 14th Board of Alderman meeting, Alderman Casey Wong requested staff to prepare a memo discussing the options for modifying the Board of Adjustment's criteria for evaluating a variance request.

Following internal discussions and investigation of neighboring community's criteria, staff believes that modifying our criteria to discuss "practical difficulties and unnecessary hardships" may be the appropriate direction for the City to progress.

The municipalities of Fenton, Des Peres and Ladue each include some form of this verbiage in their criteria for evaluating variance requests.

Des Peres is the most basic, giving much latitude to the Board.

Des Peres

Chapter 2, Article 4, Section 2-149

a) The board of adjustment shall have the following powers:

- 1) To hear and decide all matters referred to it or upon which it is required to pass under this article or other provisions of the city's Zoning and Planning Code.
- 2) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this article or other provisions of the city's Zoning and Planning Code.
- 3) To hear and decide appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Fenton is more strict, it discusses further considerations such as not impairing an adequate supply of light and air to adjacent property, increase congestion in Streets, increase the danger of fire, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, and welfare of the City.

FENTON

Chapter 405, Section 130A

The Board of Adjustment shall have the following powers:

- 1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Director or other administrative official in the enforcement of this Code or Sections 89.010 to 89.410, RSMo.;
- 2) To hear and decide all matters referred to it or upon which it is required to pass under such ordinance;
- 3) In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction, or alteration of Buildings or Structures, or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Section 405.140

Appeals To The Board Of Adjustment.

In exercising the above powers, the Board of Adjustment may, in conformity with the provisions of this Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. In considering all appeals, the Board of Adjustment shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the Official Zone District Map and will not impair an adequate supply of light and air to adjacent property, increase congestion in Streets, increase the danger of fire, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, and welfare of the City. Upon such finding, the Board of Adjustment shall also consider whether the Applicant has met his burden of showing a practical difficulty or undue hardship as applicable to such variance request or satisfied his burden as to an appeal. Every change granted or denied by the Board of Adjustment shall be accompanied by a written finding of fact based on sworn testimony and evidence specifying the reason for granting or denying the variation. Staff is hereby authorized to transcribe the Board of Adjustment's findings and decision in written form and the Chairman is hereby authorized to execute such decision upon a finding that such accurately represents the Board of Adjustment's decision. Upon execution of such decision, such decision shall be deemed filed in the office of the Board of Adjustment. The decision of the Board of Adjustment shall be made a part of any building permit in which variation is allowed.

Ladue's ordinance is a combination of using "practical difficulties or unnecessary hardships" and requiring the applicant demonstrate an unusual hardship or great difficulty.

Ladue

Zoning Ordinance, Section 10H9

Whenever a property owner shows that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures or the use of land will impose upon him practical difficulties or unnecessary hardship, to permit such variations of the strict application of the terms of this ordinance as are in harmony with its general purpose and intent. But any such variation may be granted only when the Board is satisfied that it will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant such variation, and at the same time properly protect the surrounding property. In no case, however, shall the Board permit a use which is not a permitted use of land under this ordinance in the district in which the land involved is located, and in no case shall the Board permit a variation, waiver or modification of a requirement of this ordinance which does not substantially comply with its terms and accord with its spirit and purpose. A self-inflicted hardship shall not be deemed a practical difficulty or an unnecessary hardship. [Ord. 1379, Ord. 1595, Ord. 1774]

The City could change our ordinance requirements so that instead of "there must be a finding" for the four conditions before granting a variance it could state the four conditions "should be considered" before granting a variance. Whereas City Attorney Seele has stated that having factors is helpful when the Board of Adjustment denies a variance of which is then challenged in court, she also agrees that the factors do make it difficult to grant a variance.

The City's history with the Board of Adjustment is that they are going to grant a variance when it is reasonable and there is no opposition from neighbors or other City residents, they are consistent in their granting of variances and take the applications very seriously.

Based on the information discussed, staff recommends an ordinance similar to the Ladue ordinance. There are no factors that are required to be met, it requires the applicant to show practical difficulties or unnecessary hardship, and it states surrounding properties must be protected. Staff can work with City Attorney Seele to draft a new ordinance based on this memo and any Board of Alderman comments.

Please let me know if there are any questions or if you would like to discuss prior to the Board meeting on July 12th.

Respectfully,
Bryson E. Baker, P.E.