

**VILLAGE OF ELK RAPIDS
ZONING VARIANCE REQUEST**

PRACTICAL DIFFICULTY - STATEMENT OF JUSTIFICATION

The following six conclusions are based on the standards for granting a non-use variance found in Section 154.02 of the Village of Elk Rapids Zoning and Unified Development Code. A copy of that section and any other relevant sections are available at the Village offices located in the Elk Rapids Governmental Center.

Important: In every instance, each of the six standards in the Code MUST be satisfied in order for the Zoning Board of Appeals to grant a variance. The applicant bears the burden of proof that a “Practical Difficulty” exists by presenting sufficient factual evidence to support findings of fact that allow the Board to reasonably reach each of the required conclusions. Thus, it is in your best interest to answer each of the six conclusions in this Statement of Justification clearly and completely, with as much detail as necessary to support your case for “Practical Difficulty” which must be proven in order for the Board to grant a variance. If more space is needed, attach additional pages as necessary as well as any other documents or materials that provide supporting factual evidence.

Practical Difficulty is a legal term. The Board concludes a valid case has been made for the existence of a practical difficulty when it finds:

1. That a unique circumstance or condition relative to your land prevents you from enjoying the reasonable use of your property as others in the same zoning district are generally able to do.
2. That the requested variance:
 - a. Will not be significantly harmful to your neighbors or the community as a whole.
 - b. Is consistent with the intent of the Code.
 - c. Was not made necessary by anything the applicant did in the first place.
 - d. Is granted with fairness and integrity afforded both the applicant and the public at large.

Each of the following conclusions is written first with the legal wording as found in Section 154.02 of the Code, then a brief commentary to help you understand the kind of information required. Any discrepancies found between what is written in the Code and what is written in the commentary, the language of the Code shall prevail.

1. Special conditions and circumstances exist which are specific to the land, structure or building directly involved and not to conditions or circumstances that are generally found elsewhere in the same zoning district. These special conditions or circumstances normally include:

- a. Exceptional narrowness, shallowness or shape of the specific property;
- b. Exceptional topographic conditions or other extraordinary situation on the specific property, structure or building;
- c. Use or development of the property immediately adjoining the property in question.
- d. The special conditions are specific to the property in question and are not common to other properties in the same zoning district or vicinity.

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The first thing the Board will want to know is **what makes your parcel, your property, your land, so unusual?** You must show that you truly have a practical difficulty, one not shared generally by others in your zoning district, which means all other property owners in R-1, R-2, B-1, B-2 etc. – not just your immediate neighbors.

Explain here in detail the special conditions, problems or circumstances that exist with your land, something that is not the case with most other parcels in your zoning district: _____

2. Literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Code.

If you are not granted this variance, will others in your zoning district be able to enjoy substantial rights and privileges that you are unable to? The Board will need to be convinced that because of the special conditions and circumstances of your property noted in Item 1 above, strict compliance with the regulations will **not allow you** reasonable use or development of your property **that others** in your zoning district **are rightfully able to do**. For example, if you claim your lot is too narrow to allow you to build a garage without a variance, yet other residents in your zoning district with the same size lots were able to do so, you would **not** have a strong case for a variance.

Explain: _____

3. The special conditions or circumstances identified as existing on the property in Item 1 above do not result from actions of the applicant.

Has the immediate practical difficulty been caused by anything the applicant has done? So called “**self created**” **practical difficulty** may not be used to justify granting a variance. Some examples of such difficulties are purchasing property that is nonconforming, having previously constructed/placed structures in a location which hinders your current plan for the property or is one due to owner violation of the Code or one that the owner should have or could have avoided.

Explain: _____

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- 4. The variance is the minimum variance that will make possible the reasonable use of the land, building or structure.**

The extent of the variance requested is limited to the minimum necessary in order to provide the property owner reasonable use of the property. The Board will need to be convinced that any and all alternatives that would **not** require a variance do not exist because of the special conditions or circumstances identified Item 1 above.

Explain all alternatives you considered and why each is not a viable alternative: _____

- 5. The granting of the variance will not be injurious to neighboring properties, detrimental to the general welfare and not impair the general purpose and intent of the Code.**

Your neighbors' feelings about your request for a variance are important, but applicants should realize that your neighbors' testimony at the hearing or presented in a letter to the Board is not necessarily sufficient in itself to convince the Board that granting the variance will **not be detrimental to the neighborhood**. Variances go with the land, not with the current land owner. Consequently, the Board may be inclined to take a broader, more impartial view than that of the neighbors. The Board must consider whether or not granting a variance will hinder the community in achieving the very goals and objectives, **the Intent**, the Code is trying to accomplish. Explain how your request for variance:

- a. Will not result in changing the character of the neighborhood; (i.e. fits the neighborhood in terms of scale, site features and other design features): _____

- b. Will not result in potential harm to neighboring properties in the form of noise, lights or any other effect not normally experienced by property owners in similar circumstances: _____

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c. Will be consistent with the Intent of the particular Section of the Code that apply to the variance request: _____

6. The granting of the variance will result in the public safety and welfare being assured and substantial justice being done.

- a. Will not materially adversely affect the health or safety of persons residing or working in the neighborhood.
- b. Will not permit development that would be dangerous to neighbors or create additional difficulties with regards to traffic, fire safety, water or sewer supply, flooding etc.
- c. Will insure that the rights of both the property owner and the public at large are met.

Comment: _____

