



ZONING BOARD OF APPEALS MEETING AGENDA STUDY SESSION

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David Lambert, Chair, and Michael Bartnik, Vice Chair
Glenn Clark, Kenneth Courtney, William Fisher
A. Allen Kneale, Thomas Strat

May 17, 2011

6:30 P.M.

Council Chamber

1. ROLL CALL

2. SUMMARY OF NEWLY ADOPTED ZONING ORDINANCE

3. REVISIONS TO RULES OF PROCEDURE

4. PUBLIC COMMENT

5. ADJOURNMENT

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk by e-mail at clerk@troymi.gov or by calling (248) 524-3317 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

Date: January 11, 2011

To: Planning Commission

From: John Szerlag, City Manager
Lori Grigg Bluhm, City Attorney
Mark F. Miller, Acting Assistant City Manager/Economic Development Services
Richard Carlisle, Carlisle/Wortman Associates, Inc.
Zachary Branigan, Carlisle/Wortman Associates, Inc.
R. Brent Savidant, Acting Planning Director

Subject: DISTRIBUTION OF DRAFT CITY OF TROY ZONING ORDINANCE

City Staff and and Carlisle/Wortman Associates, Inc. are pleased to present to you the complete Draft City of Troy Zoning Ordinance.

The document is not marked up in legislative format, with proposed changes shown in underline or ~~striketrough~~. Because of the significant changes proposed to the current Zoning Ordinance, the legislative format would have added hundreds of pages to the draft document, making for a difficult and cumbersome review. Instead, this memo serves as a summary of the proposed changes. Proposed document revisions fall into six categories:

1. Changes required to make the document easier to read and use.
2. Changes required to expedite review and approval for development applications.
3. Changes required to comply with the City of Troy Master Plan.
4. Changes of salience advanced by the Planning Commission.
5. Changes of salience advanced by Staff or Carlisle/Wortman Associates, Inc.
6. Changes required to comply with the Michigan Zoning Enabling Act (P.A. 110 of 2006), other laws and applicable case law.

The following is a summary of the proposed changes to the Zoning Ordinance:

1. Changes required to make the document easier to read and use

- Created a Table of Contents to make it easier to use the document.
- Reorganized the District Regulations section (see Summary of Zoning District Changes).
- Updated and improved existing definitions and added new definitions where necessary.
- Created new illustrations for some definitions.
- Inserted illustrations into the body of the articles, below the corresponding definition (in the existing document, illustrations are located at the end of the article).
- Eliminated the Schedule of Regulations and footnote section for area and bulk requirements.
- Provided area and bulk requirements for each zoning district, with illustrations for each district, to clarify height, lot coverage, lot area, width and setback requirements.
- Provided Schedule of Use Regulations table, which lists the zoning districts and the uses permitted within each district, as permitted by right, as a special use or as an accessory use.
- Removed specific use standards from individual zoning districts, and moved them to Article 6 Specific Use Provisions.
- Added specific use standards for a number of uses, including adult care facilities, bed and breakfast facilities, large scale retail establishments, live/work units, lodging facilities, and materials recovery facilities.

2. Changes required to expedite review and approval for development applications

The Zucker Study provides direction to encourage fast, fair and predictable development approval. Further, this fast, fair and predictable approval process will be an economic development tool by making Troy one of the fastest development approval municipalities in the State of Michigan. Changes made to bring the Zoning Ordinance into conformance with the Zucker Study include the following:

- Developed a process for administrative review and approval of site plan applications.
- Provided additional authority to the Zoning Administrator to waive required information if it is determined the information does not affect compliance with Zoning Ordinance.
- Streamlined the review and approval process for Planned Unit Developments by eliminating the Planning Commission and City Council public hearing required for Preliminary Development Plan (PDP) approval.
- Reassigned the responsibility for PDP approval for Planned Unit Developments from City Council to the Planning Commission.
- Streamlined the review and approval process for Site Condominiums by giving the Planning Commission the authority to approve Preliminary Site Condominium plans, with Final approval administratively.

3. Changes required to comply with the City of Troy Master Plan

- Modified the Zoning District Map to reflect District Regulation reorganization, as adopted in the Master Plan (see attached, Summary of District Changes).
- Added PV Planned Vehicle Sales District for the Troy Motor Mall.
- Developed Sustainable Design Project (SDP) provisions.
- Added stormwater management provisions.
- Added wind energy conversion system provisions.
- Updated environmental performance standards.

4. Changes of salience advanced by the Planning Commission

- Eliminated specific standards for temporary approval of commercial vehicles in One-Family Residential Districts. This will make it more difficult for commercial vehicles to be parked in residential districts.
- Created three Form Based Code (FBC) Districts: Big Beaver District, Maple Road District, and Neighborhood Nodes District.
- Developed the following provisions for each FBC District: Regulating Plan, Authorized Use Groups, Building Form Standards and Design Standards.
- Updated landscaping provisions.
- Strengthened maintenance requirements for landscaping materials.
- Comprehensively revised landscaping and screenwall provisions to provide flexibility in the application of landscape buffer options.
- Required landscaping in and around the perimeter of parking lots.
- Strengthened lighting provisions.

5. Changes of salience advanced by Staff or Carlisle/Wortman Associates, Inc.

- Clarified the role of the Zoning Administrator in administration of the Zoning Ordinance.
- Strengthened provisions related to home occupations and temporary buildings, structures and uses.
- Developed public hearing notice requirements, to be used for all applications where public notice is required.

- Developed provisions for performance guarantees.
- Clarified the procedure for rezoning of property.
- Expanded the general special use approval standards.
- Provided standards for the placing of conditions on special use approval by the Planning Commission.
- Simplified permitted uses by eliminating conditional uses, which are essentially permitted uses.
- Added equipment screening requirements.
- Updated parking space standards.
- Added general access management standards.
- Added general pedestrian access standards.
- Added MHP Manufactured Home Park District for Troy Mobile Home Villa.
- Moved Adult Use Business definitions from Definitions article to Adult Use provisions in Article 6 Specific Use Provisions.

6. Changes required to comply with the Michigan Zoning Enabling Act (P.A. 110 of 2006), other laws and applicable case law

- Changed the name from Board of Zoning Appeals (BZA) to Zoning Board of Appeals (ZBA) to be consistent with the Michigan Zoning Enabling Act.
- Modified the membership of the ZBA to include one Planning Commission representative only, with no Planning Commission alternate.
- Added two alternate members for the entire ZBA.
- Clarified the duties of the ZBA to include interpretations and appeals of administrative decisions.
- Strengthened the procedures for variance applications.
- Provided the ZBA the authority to review and approve use variance applications.
- Added use variance standards and procedures.
- Modified non-use variance standards so they are consistent with zoning case law.
- Broadened the standards for determining whether a nonconforming use has been abandoned.
- Updated site condominium provisions (referred to in existing document as unplatted one-family residential developments).
- Added definitions related to site condominiums.

The process for adopting the new zoning ordinance is similar to the process for adopting a proposed zoning ordinance amendment. After reviewing the proposed draft document, the Planning Commission shall schedule the required public hearing to solicit public input. Following the public hearing, the Planning Commission shall make a recommendation to City Council, which then holds a required public hearing for the proposed document. Following the public hearing, City Council may adopt the zoning ordinance.

Adoption of the zoning ordinance will necessitate revisions to other City ordinances, including Chapter 85 Signs and Chapter 60 Fees and Bonds Required. These revisions will be initiated by City Staff upon adoption of the revised Zoning Ordinance.

Attachments:

1. Summary of District Changes, December 30, 2010.

**CITY OF TROY ZONING ORDINANCE
ZONING BOARD OF APPEALS
SUMMARY OF CHANGES**

SECTION		SUBJECT	OLD ZONING ORDINANCE	SECTION	NEW ZONING ORDINANCE
TITLE	NAME		Board of Zoning Appeals	TITLE	Zoning Board of Appeals
43.10.00	MEMBERSHIP		7 members, 1 shall be a Planning Commission member. City council may appoint 2 alternates, and one Planning Commission alternate.	15.02	Membership remains at 7, one of which may be Planning Commission member. There is no longer a Planning Commission alternate. Council shall appoint 2 alternates.
43.72.00	DIMENSIONAL VARIANCES		Criteria for approval include that certain conditions and findings exist; these were inconsistent with case law	15.04 E	For dimensional, non use variances, we have new <u>practical difficulty</u> criteria consistent with Case Law.
43.72.00	USE VARIANCES		Not permitted	15.04 B & F, 15.05	Use variances are permitted subject to specific <u>unnecessary hardship</u> criteria. Applicants required by ordinance to hold a pre hearing application with staff.
43.73.00	EXPANSION OF NONCONFORMITIES		Approval criteria has standards specific to Expansion of Nonconforming Uses or Structures		Specific approval criteria no longer in the code. Expansion of nonconformities allowed if practical difficulty exists.
43.74.00	TEMPORARY OUTDOOR PARKING OF COMMERCIAL VEHICLES IN SINGLE FAMILY DISTRICTS		BZA could allow temporary parking of commercial vehicles subject to specific review and approval standards.	7.12	Ability for review and approval eliminated. Definition of Commercial Vehicle and allowances for outdoor parking in single family residential districts remain unchanged.

**CITY OF TROY ZONING ORDINANCE
ZONING BOARD OF APPEALS
SUMMARY OF CHANGES**

43.76.00	SCREENWALL WAIVERS/MODIFICATIONS	Permitted/renewed by BZA for a maximum of 2 years	Table 13.02B	Permission no longer exists. If modification desired, need permanent variance. Depending on use, there are 3 landscape screening options; walls can be used in some circumstances. Zoning Administrator determines status of screening for expired waivers granted under old ordinance.
43.80.00	RADIO ANTENNA HEIGHT LIMITS	Specific standards allowing <u>modification</u> (not a variance) of radio antenna height limits		Dimensional variance standards apply
43.80.00	TEMPORARY USES	Permit temporary buildings for periods not to exceed 2 years	7.13	Zoning Administrator may permit temporary buildings, structures, and uses including temporary construction buildings, structures, and uses; sales offices or model homes, dwellings, portable shipping containers, portable residential storage containers (PODS). Modifications to the ordinance standards would be done by ZBA variance.
43.86.00	PLANNING COMMISSION ACTION ON SITE PLANS	For plans required to be reviewed by the Planning Commission: If a variance required, submit to Planning Commission. Planning Commission cannot take action until disposition of variances by ZBA.	15.06	No change
43.75.00, 43.70.01, 43.30.00	APPEALS OF ADMINISTRATIVE DECISIONS AND INTERPRETATIONS	Various	15.04 (C) (4) & 15.04 (D)	Clarify and provide more specific directions on how ZBA should address appeals of administrative decisions; clarify scope of the Board relative to interpreting the Zoning Ordinance.

CRITERIA FOR GRANTING VARIANCES

1. Two Kinds of Variances.

- A. Non-Use Variances (also known as dimensional variances). Variances which do not disturb the underlying use of the property as required in the specific zoning district but which do allow the property owner to deviate from the physical building requirements such as setback, minimum area, height, and lot coverage. Zoning Ordinance, Section 15.04. E. Note: A non-use variances includes the right to enlarge a non-conforming use or structure.
- B. Use Variances: Authorization for a use not permitted in a specific zoning district. Zoning Ordinance Section 15.04. F.

2. Standard of Review (Criteria) to Grant a Variance The Troy Zoning Ordinance is in compliance with the Michigan Zoning Act which set out the standards for when a ZBA may grant a property owner a variance from a Zoning Ordinance. The standard of review for a non-use (dimensional variance) and a use variance are different.

- A. A non-use variance only requires a “practical difficulty”. Attached is the case of *National Boatland, Inc. v. Farmington Hills Zoning Board of Appeals*, 146 Mich. App. 380 (1985) which is cited frequently as setting out an analysis of how an appeals court reviews a ZBA record to determine if a practical difficulty exists.

The Troy Zoning Ordinance defines “practical difficulty” by setting out criteria which must be met. Section 15.04. E. reads as follows:

“2. Dimensional or other non-use variances shall not be granted by the Zoning Board of Appeals unless it can be determined that all of the following facts and conditions exist:

- a. Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same district. Characteristics of property which shall be considered include exceptional narrowness, shallowness, smallness, irregular shape, topography, vegetation and other similar characteristics.
- b. The characteristics which make compliance with dimensional Requirements difficult must be related to the premises for which the variance is sought, not some other location.
- c. The characteristic which make compliance with the dimensional

Requirements shall not be of a personal nature.

- d. The characteristics which make compliance with dimensional requirements difficult must not have been created by the current or previous owner.
- e. The proposed variance will not be harmful or alter the essential character of the area in which the property is located, will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property value within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the City.”

C. A use variance requires an “unnecessary hardship”. The Troy Zoning Ordinance defines “unnecessary hardship” by setting out specific criteria which must be met to grant a use variance. Section 15.04. F. reads as follows:

“1. Use Variance Standards of Review. A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing, and that all of the following conditions are met:

- a. The applicant has demonstrated that the site cannot reasonably be used for any of the uses allowed within the current zoning district designation. The Zoning Board of Appeals may require submission of documentation from professionals or certified experts to substantiate this finding.
- b. That the condition or situation of the specific parcel of property or the intended use of such property for which the variance is sought is unique to that property and not commonly present in the general vicinity or in the zoning district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. Such unique conditions or situations include:
 - i. Exceptional narrowness, shallowness or shape of a

Specific property on the effective date of the ordinance from which this chapter is derived.

- ii. Exceptional topographic conditions or other extraordinary situation on the land, building or structure.
 - iii. The use or development of the property immediately adjoining the property in question.
 - iv. Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.
- c. The use variance will not alter the essential character of the neighborhood or the intent of the Master Plan, or be a detriment to adjacent properties.
 - d. The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised.
 - e. The immediate practical difficulty causing the need for variance request was not self-created by the applicant.”

C

Court of Appeals of Michigan.
 NATIONAL BOATLAND, INC., Plaintiff-Appellant,
 v.
 FARMINGTON HILLS ZONING BOARD OF AP-
 PEALS, Defendant-Appellee.

Docket No. 78696.
 Submitted May 22, 1985.
 Decided Oct. 9, 1985.
 Released for Publication Jan. 22, 1986.

Following Zoning Board of Appeals' denial of boat retailer's petition for variance from ordinance requirements, retailer filed complaint for order of superintending control. The Oakland County Circuit Court, Fred M. Mester, J., affirmed the Board's decision, and retailer appealed. The Court of Appeals held that: (1) retailer's argument that planting of trees around retailer's addition, as required by ordinance, would restrict retailer's continued outdoor storage of boats, which was nonconforming use, was entitled to little weight; (2) member of Board was entitled to ask retailer whether retailer's prior and continuing outdoor storage of boats was permitted in zoning district where retailer's establishment was located; and (3) denial of petition for variance from ordinance requiring retailer to construct four-foot wall around addition to retailer's establishment and to plant deciduous trees within wall was not abuse of Board's discretion.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ↪1300

414 Zoning and Planning
414VI Nonconforming Uses
414k1300 k. In general. [Most Cited Cases](#)
 (Formerly 414k321)

One goal of zoning is eventual elimination of nonconforming uses so that ends sought by ordinance can be achieved.

[2] Zoning and Planning 414 ↪1102

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(B) Particular Matters
414k1102 k. Nonconforming uses. [Most Cited Cases](#)
 (Formerly 414k84)

City is entitled to provide by ordinance for resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in ordinance. [M.C.L.A. § 125.583a](#).

[3] Zoning and Planning 414 ↪1531

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1531 k. Warehousing and storage.
[Most Cited Cases](#)
 (Formerly 414k539)

Argument that planting of trees around addition to boat retailer's establishment, as required by ordinance, would restrict retailer's continued outdoor storage of boats was entitled to little weight in considering retailer's petition for variance from ordinance requirements, where outdoor storage of boats was nonconforming use and ordinance specifically provided that nonconforming use shall not be expanded except to change it to conforming use.

[4] Zoning and Planning 414 ↪1473

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1473 k. Grounds for grant or denial in general. [Most Cited Cases](#)
 (Formerly 414k489)

Even though some problems inherent in complying with ordinance are result of actions of party seeking variance, variance may nevertheless be granted where requirements for variance are otherwise

met.

[5] Zoning and Planning 414 ↪1465

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1465 k. Nature and necessity in general. **Most Cited Cases**
(Formerly 414k481)

“Use variances” permit use of land which zoning ordinance otherwise proscribes.

[6] Zoning and Planning 414 ↪1491

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1489 Architectural and Structural Designs
414k1491 k. Area variances in general. **Most Cited Cases**
(Formerly 414k481)

Zoning and Planning 414 ↪1533

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1533 k. Particular prior or nonconforming uses. **Most Cited Cases**
(Formerly 414k481)

“Non-use variances” are not concerned with use of land, but rather, with changes in structure's area, height, setback, and the like, and include right to enlarge nonconforming uses or alter nonconforming structures.

[7] Zoning and Planning 414 ↪1526

414 Zoning and Planning
414IX Variances and Exceptions
414IX(A) In General
414k1525 Stores and Sales
414k1526 k. In general. **Most Cited Cases**
(Formerly 414k535)

Boat retailer which brought petition for variance from ordinance requirements was not required to show unnecessary hardship in following ordinance, but rather, was only required to show practical difficulties in following such ordinance, where requested variances would not change use of land from its permitted business use. **M.C.L.A. § 125.293.**

[8] Zoning and Planning 414 ↪1542

414 Zoning and Planning
414IX Variances and Exceptions
414IX(B) Proceedings for Variances and Exceptions
414k1539 Notice and Hearing
414k1542 k. Hearings in general. **Most Cited Cases**
(Formerly 414k541)

Member of Zoning Board of Appeals was entitled to ask boat retailer whether prior and continuing outdoor storage of boats was permitted in district where retailer's property was located at hearing on retailer's petition for variance from ordinance requirements applicable to retailer's extension of his establishment, where city ordinance specifically provided that nonconforming use shall not be expanded, except to change it to conforming use.

[9] Zoning and Planning 414 ↪1542

414 Zoning and Planning
414IX Variances and Exceptions
414IX(B) Proceedings for Variances and Exceptions
414k1539 Notice and Hearing
414k1542 k. Hearings in general. **Most Cited Cases**
(Formerly 414k541)

Members of Zoning Board of Appeals presiding at hearing on boat retailer's petition for variance from ordinance requiring retailer to construct four-foot wall around indoor storage facility added to retailer's establishment and to plant deciduous trees inside such wall were entitled to suggest that wall greater than four feet tall be built and that retailer could select appropriate tree which would not drop residue on retailer's boats.

[\[10\] Zoning and Planning 414 ↩️1531](#)

[414 Zoning and Planning](#)

[414IX Variances and Exceptions](#)

[414IX\(A\) In General](#)

[414k1531 k. Warehousing and storage.](#)

[Most Cited Cases](#)

(Formerly 414k542.1, 414k542)

Denial of boat retailer's petition for variance from ordinance requiring retailer to construct four-foot wall around large indoor storage facility added to retailer's establishment and to plant deciduous trees inside wall was not abuse of discretion by Zoning Board of Appeals, even though immediate neighbors did not want wall built and retailer argued that wall would act as steppingstone for thieves and vandals over retailer's ten-foot chain link fence, wall and trees would prevent neighbors from continuing practice of watching retailer's property and reporting thieves, and debris from trees would fall on boats stored outside, where granting variance would be detrimental to community as a whole by establishing precedent which could defeat purpose of ordinance, trees could be selected which would minimize problem of droppings, ten-foot chain link fence had not kept out thieves and vandals in past, and retailer had no right to expect neighbors to continue watching property.

****474 *382** Lawson & Lawson by David M. Lawson, Southfield, for plaintiff-appellant.

Brennan, Bibeau & Poehlman, P.C. by Paul H. Bibeau, Farmington Hills, for defendant-appellee.

Before V.J. BRENNAN, P.J., and HOLBROOK and SIMON, ^{FN*} JJ.

^{FN*} Charles W. Simon, Jr., 8th Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to [Const. 1963, Art. 6, Sec. 23](#), as amended 1968.

PER CURIAM.

National Boatland, Inc. (hereinafter Boatland) petitioned the Farmington Hills Zoning Board of Appeals (hereinafter Board) for a variance from certain ordinance requirements. The Board denied Boatland's petition. Boatland filed a timely complaint for

an order of superintending control in the Oakland County Circuit Court on June 3, 1980. Enforcement of the ordinance as to Boatland was stayed pending the circuit court's decision. On May 20, 1983, Judge Fred M. Mester filed an opinion and order affirming the Board's decision. Judge Mester reconsidered the case on Boatland's motion on May 30, 1984, and again affirmed the Board's decision, adopting his earlier opinion and order. Boatland appeals as of right. A new stay order was entered for the pendency of the appeal.

Boatland is engaged in the retail sale and service of recreational boats, motors, trailers, and accessories. The business is located on Grand River Avenue in the City of Farmington Hills (hereinafter City) on land zoned B-3. B-3 defines the general business district of the City.

Boatland's facilities include a showroom, a repair facility, indoor storage facilities, and an outdoor*383 storage lot. The buildings fail to meet certain zoning ordinance requirements as to setback and as to obscuring walls and trees, but have been allowed to remain unchanged as nonconforming. Apparently, outdoor storage of boats has also been allowed to continue as a nonconforming use.

In 1979, Boatland added a large indoor storage facility on its property. At such time, the City required the new building to comply with the zoning ordinance's requirements. On February 23, 1979, the City issued a "punch list" of outstanding items to be completed to obtain compliance with the building code and zoning ordinance. To fulfill the zoning ordinance requirements, a four-foot obscuring wall had to be built along Boatland's two boundaries adjoining residential property, with 15 deciduous trees planted inside the wall. The cost of complying with these requirements was approximately \$28,000.

On March 7, 1980, Boatland applied for a non-use variance ^{FN1} from the requirement of the zoning ordinance that an obscuring wall be built and deciduous trees be planted. Boatland made its presentation at the May 6, 1980, meeting of the Board.

^{FN1}. Frequently referred to as an area variance.

Boatland requested a variance from the required planting of trees because the sap, leaves, and debris

from the trees would damage the boats stored outside. Boatland requested a variance from the four-foot ****475** wall requirement on two bases. First, the wall would fail in its purpose in that the boats stored were all greater than four feet in height and would remain visible to the neighbors. Further, Boatland's lot was not used for parking so the wall was not necessary to shield headlights of cars. Second, the wall would apparently obscure ***384** neighbors' views of the property, which had proven beneficial in the past in spotting fires and vandals.

Boatland's property had common boundaries with two residential owners. Both objected to the erection of the four-foot walls. June Gilbert stated that she did not want to look at a brick wall. Further, she felt that a wall would restrict her ability to see thieves, both on Boatland's property and on her own. Gilbert objected to the planting of trees because she felt the land was not stable enough to support them. She feared that ice storms could cause the trees to topple into her yard. Ira Weber objected to the wall because he felt it would act as a steppingstone to get onto his property.

The issue for our consideration is whether the City of Farmington Hills Zoning Board of Appeals acted reasonably in denying Boatland's request for a variance.

Review of a zoning board of appeals' decision is governed by statute. The circuit court is to review the record and the board of appeals' decision to ensure that the decision:

“(a) Complies with the constitution and laws of the state.

“(b) Is based upon proper procedure.

“(c) Is supported by competent, material, and substantial evidence on the record.

“(d) Represents the reasonable exercise of discretion granted by law to the board of appeals.”
M.C.L. § 125.293a; § M.S.A. 5.2963(23a).

See Johnson v. Robinson Twp., 420 Mich. 115, 124, 359 N.W.2d 526 (1984):

On appeal, Boatland does not question the valid-

ity of the provisions of the ordinance from which it ***385** sought a variance. Rather, Boatland restricts its challenge to the reasonableness of the Board's exercise of its discretion.

As a beginning point in analyzing the propriety of the Board's exercise of its discretion, it must be recognized that elements of Boatland's use of the property constitute nonconforming use. Nonconforming use can mean several related things:

“ ‘A “nonconforming use” comprehends the physical characteristics, dimensions, or location of a structure as well as the functional use thereof or of the premises on which it is located, and is used as a generic term that includes nonconforming use of conforming structures and plots, nonconforming use of nonconforming structures and plots, and conforming use of nonconforming structures and plots.’ (Footnotes omitted.)” Long Island Court Homeowners Ass'n v. Methner, 74 Mich App 383, 387; 254 NW2d 57 (1977), *lv den* 401 Mich 816 (1977), quoting 82 Am.Jur.2d, Zoning & Planning, § 178, p. 685.

In the present case, the plot is nonconforming because a four-foot wall was not built and trees were not planted, as required by the zoning ordinance. The older buildings are also nonconforming because they lie within a setback area. Finally, the outdoor storage of boats is apparently a nonconforming use of the property.

[1][2] One of the goals of zoning is the eventual elimination of nonconforming uses so that the ends sought by the ordinance can be achieved. Norton Shores v. Carr, 81 Mich.App. 715, 720, 265 N.W.2d 802 (1978), *lv. den.* 403 Mich. 812 (1978). Thus, the City may:

“provide by ordinance for the resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance.” M.C.L. § 125.583a(2); M.S.A. § 5.2933(1)(2).

386** [3] The City's ordinance, specifically § 1902, paragraph 10, provides that a nonconforming use shall not be expanded except *476** to change it to a conforming use. Although a nonconforming use is allowed to continue in order to avoid hardship for the

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owner of the property, such does not allow erection of new nonconforming buildings or additions to existing nonconforming buildings. *South Central Improvement Ass'n. v. St Clair Shores*, 348 Mich. 153, 158, 82 N.W.2d 453 (1957); *Cole v. Battle Creek*, 298 Mich. 98, 104, 298 N.W. 466 (1941). When a change in the nonconforming use is contemplated, the authorities may take advantage of that fact to compel a lessening or complete suppression of the nonconformity. *Austin v. Older*, 283 Mich. 667, 675, 278 N.W. 727 (1938).

In the present case, Boatland erected a new building on its property. By doing so, it extended its use in such a way that the City could require the new building to comply with all of the zoning ordinance's requirements. Included within such requirements were that a four-foot wall be erected and deciduous trees planted alongside the wall. Thus, policy was strongly against the granting of a variance from the fence and wall requirements, notwithstanding that such requirements would conflict with Boatland's nonconforming use composed of outdoor storage. Any practical difficulties resulting to Boatland in this regard were brought on by its own action of expanding its facilities. Self-created problems are not a proper basis for granting a variance. *Robinson Twp., supra*, 420 Mich. p. 126, 359 N.W.2d 526. Therefore, the Board properly gave little weight to Boatland's argument that the planting of the trees would restrict its outdoor storage of boats.

[4][5][6] Even though some of Boatland's problems may have resulted from its own actions, a variance may still be proper because the requirements for a *387 variance were otherwise met. *Indian Village Manor Co. v. Detroit*, 5 Mich.App. 679, 685, 147 N.W.2d 731 (1967). Variances fall within one of two categories: use variances or non-use variances. Use variances permit a use of the land which the zoning ordinance otherwise proscribes. Non-use variances are not concerned with the use of the land but, rather, with changes in a structure's area, height, setback, and the like. *Heritage Hill Ass'n, Inc. v. Grand Rapids*, 48 Mich.App. 765, 768, 211 N.W.2d 77 (1973). Non-use variances also include "the right to enlarge nonconforming uses or alter nonconforming structures". 3 Rathkopf, *The Law of Zoning and Planning*, (4th ed., 1979) p. 38-1.

[7] Boatland's requested variances would not change the use of the land from its permitted business

use. Thus, the requested variances were of the non-use variety. As opposed to use variances, Boatland did not have to show unnecessary hardship in following the ordinance but, rather, needed only to show practical difficulties in following such ordinance. *Heritage Hill, supra*, p. 769, 211 N.W.2d 77; *Indian Village Manor, supra*, 5 Mich.App. p. 684, 147 N.W.2d 731. See also M.C.L. § 125.293; M.S.A. § 5.2963(23).

This state has not established criteria for determining when a landowner will suffer a practical difficulty from enforcement of a zoning ordinance. Some cases have suggested that, at the very least, the landowner must show that the problem is unique to his land, not shared by all others. *Tireman-Joy-Chicago Improvement Ass'n. v. Chernick*, 361 Mich. 211, 216, 105 N.W.2d 57 (1960); *George v. Harrison Twp.*, 44 Mich.App. 357, 363, 205 N.W.2d 254 (1973), *lv. den.* 389 Mich. 787 (1973). However, in cases where this Court found a zoning board of appeals to have abused its discretion in denying a variance, it does not appear this principle was *388 rigidly followed. See *Indian Village Manor, supra*, and *Heritage Hill Ass'n., supra*.

Other jurisdictions have set forth factors to be considered in determining whether a landowner has a practical difficulty warranting a variance from the ordinance. The factors which have been summarized in 2 Rathkopf, *The Law of Zoning and Planning* (3d ed., 1972), p. 45-28-29, and adopted by other jurisdictions are

"(1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density**477 would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"(2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"(3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

See also 3 Rathkopf, *The Law of Zoning and Planning* (4th ed., 1979), p. 38-49, which refers to the third edition and cites the case of *McLean v. Soley*, 270 Md. 208; 310 A.2d 783 (1973), which incorporated the three factors cited by Rathkopf. See also *Board of Adjustment of New Castle County v. Kwik-Check Realty, Inc.*, 389 A.2d 1289, 1291 (Del., 1978), and *Carliner v. District of Columbia Board of Zoning & Adjustment*, 412 A.2d 52, 53 (D.C.App., 1980). See also 3 Anderson, *American Law of Zoning* (2d ed., 1977), § 18.47, p. 270.

Rhode Island uses a slightly different approach. It allows a variance from non-use restrictions *389 when literal enforcement would have an effect so adverse as to preclude full enjoyment of the intended use. Thus, a showing of mere inconvenience is insufficient to justify a grant of relief. *Westminster Corp. v. Zoning Board of Review of the City of Providence*, 103 R.I. 381, 387-388, 238 A.2d 353, 357 (1968); *Apostolou v. Genovesi*, 120 R.I. 501, 388 A.2d 821 (1978).

[8] In the present case, Boatland presents four reasons on appeal why it will suffer practical difficulties if it is not granted a variance from the wall and tree requirements of the City's zoning ordinances: (1) the four-foot wall would fail to hide boats stored on Boatland's lots because all the boats in their skids are over four feet in height; (2) the four-foot wall would act as a steppingstone over Boatland's ten-foot chain link fence, allowing thieves and vandals easier entrance and exit from its property; (3) the four-foot wall and trees would prevent neighbors from continuing the practice of watching Boatland's property and reporting thieves and fires; and (4) leaves and sap from the trees would fall on and harm the boats stored outside.

Boatland argues that comments from the members of the Board show that it did not properly consider these factors. There appears to be no merit to any of such claims. First, Boatland objects to a statement by Board member Deacon that Boatland failed to demonstrate any hardship regarding the wall. Although the transcript uses such word, the tape of the meeting reveals that Deacon did not use that terminology. In any event, the courts have frequently used the word "hardship" to refer to a practical difficulty asserted by a landowner.

Next, Boatland objects to Board member Ro-

berts's question as to whether outdoor storage of *390 goods was permitted in a B-3 district. Boatland asserts that this shows an improper intent of the Board to use the denial of the variance to extinguish Boatland's nonconforming use of outdoor storage. As discussed, this was a proper consideration since Boatland was seeking to extend its nonconforming use of the property.

[9] Finally, Boatland objects to suggestions by Board member Roberts that a wall greater than four feet tall be built and by Board member Fox that an appropriate tree which would not drop residue be selected. We agree with appellee that these statements show no more than an effort by the Board members to help Boatland minimize any problems.

[10] Therefore, the question remains whether the four problems identified by Boatland constituted a practical difficulty such that the Board should have granted a variance. Although the immediate neighbors**478 indicated that they did not want the wall built, it appears the Board properly considered the needs of the community as a whole. In such context, the wall and trees serve to upgrade the appearance of the property. Although portions of the boats could still be seen above the four-foot wall, it appears the wall would serve its function of making the transformation from the residential property to the business property more attractive. At the very least, the wall would serve to obscure clutter on the ground and the unattractive skids from view. Further, granting the variance would have been detrimental to the community by establishing a precedent which could defeat the purpose of the ordinance. Thus, the second Rathkopf factor would weigh against granting the variance.

The Board also recognized that trees could be selected which would minimize the problem from *391 droppings. Further, the Board recognized that the boats could be stored in such a way that droppings would not fall directly on them. It appears that it was not unreasonable for the Board to expect Boatland to clear what droppings would fall on the boats to prevent the anticipated damage. As to practical difficulties involving the four-foot wall, the Board recognized that the ten-foot chain link fence had not kept out thieves and vandals in the past. Therefore, it properly gave little weight to Boatland's fears that the wall would serve as a steppingstone onto its property. As to the neighbors' watching of Boatland's property, this

appears to be a bonus which Boatland has no right to expect to continue in any event. Certainly, it did not create a difficulty different from that of any other business required to construct a wall. Therefore, we conclude that the first Rathkopf factor also weighs against granting the variance. The Board reasonably exercised its discretion in denying Boatland's application for a variance from the wall and tree requirements of the zoning ordinance.

Affirmed.

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