

October 20, 2006

Alderman Michael Murphy, Chairman  
Finance and Personnel Committee  
City Hall – 200 E. Wells St.  
Milwaukee, WI. 53202

Re: Proposed fee increase for Dimensional Variances  
File No. 060762

Dear Alderman Murphy,

At the October 18<sup>th</sup> meeting of the Finance and Personnel Committee you requested that the Board of Zoning Appeals (BOZA) staff submit details regarding the rationale of the proposed fee increase relative to Dimensional Variance appeals. The following issues were examined and ultimately used in the rationale to determine what a reasonable and fair fee increase should be for these prohibited zoning requests:

1. Dimensional Variances, by definition, are prohibited by the Zoning Code and warrant extensive analysis by staff (and the Board) to ensure that the preservation of intent of the zoning classification in question is upheld, that the property rights of all parties are preserved, that no detriment is caused to any party and ultimately that the appeal meets the Variance hardship threshold.
2. The Board is a Quasi-Judicial body whose decisions are subject to appeal to circuit court. Given this fact and the high standard an appellant must meet to obtain a Variance approval, the Board must be extremely diligent in its duties to ensure that any decision it renders can withstand the potential of legal scrutiny.
3. The Zoning Code recodification of 2002 has brought forth many more, new and complicated types of design related appeals to the Board. Some of these appeals were formally under the jurisdiction of the Standards and Appeals Commissions, while others are the product of new design standards or changes in technology (such as digital billboards).
4. A high percentage of Variance cases are either contested or at a minimum require a formal public hearing.
5. A high percentage of Variance cases are adjourned by neighbors, Alderman, or other concerned parties.

6. As enforcement efforts of the City and public policy priorities change over time, the Board is directly impacted. For example, it has recently been brought to my attention that both the quality and completion of code required landscaping around the city (for both BOZA and permitted uses) is or will soon be a major point of emphasis by City staff. This will undoubtedly lead to additional landscaping Variance appeals, which can be quite complex, being filed with the Board.
7. The current BOZA fee for Dimensional Variance requests, which are prohibited, are less than that of Special Use appeals, which are generally considered acceptable uses.
8. The fee structure of other appeal Boards from comparable size cities to Milwaukee were researched. The Variance fee charged by the City of Milwaukee was consistently on the lower end of the spectrum.
9. BOZA last increased its fees in 1997. It is clear and has been documented that the operating costs of the Board have increased since that time.

Points 1 – 7 all relate to the additional time and resources that are utilized by the Board and its staff to ensure that neither the City of Milwaukee nor its residents are negatively impacted by an approved Variance request. It is important to understand that the burden of ensuring that a particular Variance proposal has no negative impacts on the surrounding area is that of the Board, while the costs associated with such an appeal and review should be absorbed by the appellant, not the general tax payer in the City of Milwaukee. The cost is directly related to the potential negative impacts that these expressly prohibited appeals can create. It should be noted that as part of this proposed fee increase for Dimensional Variances, Variance appeals involving residential fencing issues will only increase by \$50.

Please feel free to contact me regarding the content of this letter and any other questions that you might have relative to this proposed fee increase. The overall goal of the BOZA fee structure is to make the appeals process cost neutral to the general tax payer by having those that appeal to the Board bear the operational cost of the Board.

Sincerely,

Clifton W. Crump, Secretary  
Board of Zoning Appeals