

Reasoning for Granting the Hardship Variance (dimensional variance) P&Z 22-143 request – allow having additional height for the existing Japanese wisteria landscape pergola at 231 Morrison Avenue, Somerville, MA 02144 are as followings:

What is zoning?

The primary purpose of zoning is to segregate uses that are thought to be incompatible. In practice, zoning is used to prevent new development from interfering with existing residents and businesses and to preserve the “character” of a community. Zoning is commonly controlled by local governments such as town, cities or villages. The municipality adopts a zoning code which sets forth what uses are allowed in certain areas and other guidelines and restrictions that are ***designed to develop some conformity in the neighborhood and preserve the property values.***

A zoning ordinance is inherently rigid. Within this rigid structure of zoning are the definitions of where suitable uses can take place, the bulk or scale of those uses allowed, how those uses are accessed, etc. There must also be mechanisms for flexibility based on Statutory and Constitutional (5th Amendment) grounds. Zoning must allow for differences in types of allowed uses, physical characteristics of the land, unique needs of neighborhoods and to prevent infringement on constitutionally protected property interests.

One mechanism for flexibility in zoning is the variance. A variance is the authority to depart from the literal application of the zoning ordinance because of an ***Unnecessary Hardship*** (in the case of a use variance) or a ***Practical Difficulty*** (in the case of a non-use or dimensional variance) resulting from the physical characteristics of the land.

Dimensional Variances

- Strict compliance with the standard would unreasonably prevent the landowner from using the property for a permitted use or would render conformity necessarily burdensome.
- The particular request, or a lesser relaxation of ordinance standard, would provide substantial justice to the landowner and neighbors;
- The plight is due to unique circumstances of property and is not shared by neighboring properties in the same zone.

Normally the standards come from case law. A good statute would state “the ordinance shall establish procedures for the review and standards for approval of all types of variances”.

Therefore, a zoning ordinance shall include these standards and may also include additional standards that apply to dimensional variance requests.

Is there another option?

On the zoning standard, there are valid health and safety reasons for zoning regulations. When these regulations treat an applicant unfairly in relation to unique aspects of the land they should be relaxed. However, if a lesser variance than requested would provide substantial justice to the property owner, the lesser variance should be considered.

Amending an ordinance

If the circumstances for which a variance is warranted are shared among numerous properties in the same City, then it may be better to consider amending the zoning ordinance.

Is the issue "self-created"?

This unnecessary hardship has not been created by the applicant themselves, that it flows from some condition unique to the subject property, and that it does not result merely from the application of the provisions of the controlling ordinance.

Findings for Granting this Hardship Variance – a dimensional variance to assist property owner to provide a decent landscape pergola for the existing old Japanese wisteria: to take good care of the existing old Japanese wisteria – the pergola needs to have a sufficient height without any Practical Difficulty for the Japanese wisteria to have a healthy natural growth to allow drooping racemes flower blossoming. Also to provide the property owner with a safe and sufficient access space and environment to upkeep, maintain and manage the healthy growth of the old Japanese wisteria and daily life of the family.

1. That there are unique physical circumstances or conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance.
2. That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property.
3. That such unnecessary hardship has not been created by the appellant.
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Reasoning for Granting this Hardship Variance (dimensional variance) P&Z 22-143 additional height request for the existing Japanese wisteria landscape pergola at 231 Morrison Avenue, Somerville, MA 02144 are as followings:

That the existing particular physical surroundings, shape or topographical condition of the specific property, and the existing old Japanese wisteria has the specific growth nature with long drooping racemes flowerings –

Japanese Wisteria

Wisteria floribunda grows vigorously and twines in a clockwise pattern. This species has many cultivars with vines that bloom longer and produce racemes made up of fragrant violet flowers starting in late spring or early summer. Wisteria does best with plenty of full sunlight and loose soil with good drainage.

Japanese Wisteria is described as more “graceful” than other varieties, but it also requires more care and attention when it comes to pruning and training. These plants bloom well in full sun.

These flower clusters are called racemes, and their length varies depending on the plant and the growing conditions. Certain climate zones or weather patterns may impact the length of the flower clusters, and typically the racemes will get longer over time as the plant matures.

For that reason, *Wisteria floribunda* (Japanese Wisteria) is often a popular choice for covering a pergola, as it has the longest racemes of all the Wisteria species. The flower clusters can grow to as long as 36 inches (90 cm).





1. of the existing old Japanese wisteria plant involved, would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requesting is the minimum variance that will make possible the reasonable use of the land, building or structure.

Please find these old pictures (taken about 30 years ago – around 1992/1993) at this property - 231 Morrison Avenue, Somerville, MA 02144 as reference facts for your consideration on this Hardship Variance (dimensional variance) P&Z 22-143 request:



The original main trunk of the existing old Japanese wisteria (right above the Security Sign in picture) was broken by abutter's diseased giant maple tree (57-59 College Avenue) - in late 2017, one morning the tall maple tree suddenly had fallen onto my property and damaged my roof, front porch and the Japanese wisteria plant.



This was me and the Japanese wisteria drooping racemes blossoming about 30 years ago at 231 Morrison Avenue, Somerville, MA 02144





The old short cantilever trellis was attached to the porch columns at about 10 feet height from the ground, therefore, drooping racemes in picture had to be trimmed almost daily to provide access.



Wisteria floribunda (Japanese Wisteria) needs a pergola with sufficient height for drooping racemes blossoming, as it has the longest racemes of all the Wisteria species. The flower clusters can grow to as long as 36 inches (90 cm).