

## VARIANCE APPLICATION

A variance is a relaxation of a standard in land use ordinance. Variances are decided by the Zoning board of appeals. The Zoning board is a quasi-judicial body because it functions almost like a court. The board's job is not to compromise ordinance provisions for a property owner's convenience but to apply legal criteria provided in state laws, court decisions, and the local ordinance to specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

At the time of the application, you will be asked to:

1. Complete an application form and submit a \$200.00 fee;
2. Provide detailed plans describing your lot and project (location, dimensions and materials);
3. Provide a written statement of verifiable facts showing your project meets the legal criteria for variance (Three Step Test in Part 2); and
4. Stake out lot corners or lines, the proposed building footprint and all other features of your property related to your request so that the Zoning board may inspect the site.

Following these steps, the City Administrator will publish notice of your request for a variance in the City's official newspaper noting the location and time of the required public hearing before the Zoning Board of Appeals. Your neighbors and any affected state agency will be notified. The burden will be on you as the property owner to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the Zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of hearing. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and must then deny your application.

Part 1: General Information

APPLICANT NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

PROPERTY OWNER \_\_\_\_\_

SITE ADDRESS \_\_\_\_\_

TAX ID NUMBER \_\_\_\_\_

OWNER PHONE # \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR PHONE  
NUMBER \_\_\_\_\_

Description of the subject site:

ADDRESS OF PREMISES AFFECTED: \_\_\_\_\_

\_\_\_\_\_

LOT: \_\_\_\_\_ BLOCK: \_\_\_\_\_

SUBDIVISION: \_\_\_\_\_ LOT SIZE: \_\_\_\_\_

ZONING DISTRICT CLASSIFICATION: \_\_\_\_\_

Current use and improvements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description of any prior petition for appeal, variance or conditional use: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Description and location of all nonconforming structures and uses on the property: \_\_\_\_\_

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Ordinance standard from which variance is being sought (section number and text): \_\_\_\_\_

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Describe the variance requested: \_\_\_\_\_

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Type of variance requested:

\_\_\_\_ **use variance** – permits a landowner to put a property to an otherwise prohibited use.

\_\_\_\_ **area variance** – provides an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.

Describe the effects on the **property** if the variance is not granted: \_\_\_\_\_

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### Alternatives

Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below.

- a. Alternatives you considered the comply with existing standards. If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them: \_\_\_\_\_

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- b. Alternatives you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reasons you rejected them: \_\_\_\_\_

Part 2: Three-Step Test

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

1. **Unique property limitations** *\*to be completed by the applicant\** Unique property limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

Do unique property characteristics of your property prevent compliance with the ordinance?

- Yes. Where are they located on your property? Please show the boundaries of these features on the site map that you used to describe alternatives you considered.
- No. A variance cannot be granted.

2. **No Harm to Public Interests** *\*to be completed by Zoning Board of Appeals\** A variance may not be granted which results in harm to public interests. In applying this test, the Zoning Board of Appeals must consider the impacts of the proposal and the cumulative impacts of similar projects on the interest of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Public health, safety and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provision of efficient public facilities and utilities
- Achievement of eventual compliance for nonconforming uses, structures and lots
- Any other public interest issues

Ordinance purpose: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Purpose(s) of standard from which variance is requested: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Analysis of impacts:** Discuss impacts that would result if the variance was granted. For each impact, describe potential mitigation measures and the extent to which they reduce project impact (completely, somewhat or minor). Mitigation measures must address each impact with reasonable assurance that will be reduced to an insignificant level in the short term, long term and cumulatively.

**Short term impacts:** (through the completion of construction)

Impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mitigation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Extent to which mitigation reduces project impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Long term impacts:** (after construction is completed)

Impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mitigation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Extent to which mitigation reduces project impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Cumulative impacts:** (What would happen if a similar variance request was granted for many properties?)

Impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mitigation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Extent to which mitigation reduces project impact: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will granting the variance harm the public interest?

- Yes. A variance cannot be granted.
  - No. Mitigation measures described above will be implemented to protect the public interest.
3. **Unnecessary hardship** *\*to be completed by the applicant\** An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.
- For an **area** variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The Board of Adjustments must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term rental, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel and Waushara County* decisions.
  - For a **use variance**, unnecessary hardship exists only if the property owner shows that they would have no reasonable use to the property without a variance.

*Note:* While Wisconsin Statutes do not specifically prohibit *use variances*, there are a number of practical reasons why they are not advisable:

- *Unnecessary hardship must be established in order to qualify for a variance.* This means that without the variance, no reasonable use can be made of the property.
- *Many applications for use variances are in fact administrative appeals.* Often the Zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a *use variance* but an appeal of the administrator's interpretation of ordinance text.
- *Zoning amendments are a more comprehensive approach than use variances.* Elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses or many undermine land use plan and ordinance objectives. Towns have meaningful input (veto power) for zoning amendments to general zoning ordinances.
  - Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
  - Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.

Is unnecessary hardship present?

- Yes. Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- No. A variance cannot be granted.

Part 3: Constructions Plans *\*to be completed and submitted by applicant\**

Attach construction plans detailing:

- Property lines
- Vegetation removal proposed
- Contour lines (2 feet interval)
- Ordinary high-water mark
- Floodplain and wetland boundaries
- Dimensions, locations and setback of existing and proposed structures
- Utilities, roadways and easements
- Well and sanitary system
- Location and extent of filling/grading
- Location and type of erosion control measures
- Any other construction related to your request
- Anticipated project start date

I certify that the information I have provided in this application is true and accurate.

_____	_____
Applicant Signature	Date

Received by Clerk's office:	Date: _____
Given to Zoning Board:	Date: _____
Notification to adjoining property owners sent:	Date: _____
Zoning Board meeting held:	Date: _____
Zoning Board recommendation to approve:	_____
Zoning Board recommendation to not approve:	_____
Public hearing scheduled for:	Date: _____
Class 2 notices published on:	Date: _____