

# Variance Application Packet-Washburn County, Wisconsin

## WHAT YOU SHOULD KNOW BEFORE YOU APPLY FOR A VARIANCE

Variances may be granted for one or two reasons: (1) to alter dimensional standards under the Zoning Code; or (2) to alter use standards under the Zoning Code. A common form of dimensional variance is from setbacks established under the Zoning Code and Shoreland Zoning Code. Each is handled in the same manner by the Board of Adjustments.

One of Washburn County's greatest natural assets is its lakes and rivers. As a landowner, angler, boater, or water watcher, you can appreciate first hand that what each of us does on our water front property affects not only the value of our own property, but also that of our neighbors and the health and beauty of our lakes and rivers.

Washburn County, like other counties in Wisconsin, has adopted regulations consistent with State standards to protect water resource values. These regulations include setbacks for structures from property lines and waterways. Appeals to these standards must meet specific criteria prior to being granted. The Zoning Board of Adjustments is a voluntary local body appointed by the County Board. It is authorized by law to review requests, such as yours, to vary or alter the rules established in the Zoning Ordinance.

The Board, however, is required to review your request within the specific variance standards established by state law. You, as an applicant, must clearly show the Board that all of these standards are met before they can grant your request.

An applicant is entitled to a variance only upon a showing of unnecessary hardship, which must relate to a unique condition affecting the land. It does not include a condition personal to the owner of the land, mere inconvenience, or a self-created problem. Unnecessary hardship is further explained, for purposes of a dimensional variance, as a situation whereunder compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. For purposes of a use variance, an unnecessary hardship requires demonstration that in the absence of a variance, no reasonable use may be made of the property.

Prior to applying for a variance please consider the facts of your request. Will the Board be able to determine that your variance request meets the legal requirements for a variance?

The staff of the Zoning Office cannot give you legal advice. You are encouraged to consult with an attorney of your choice if you have questions pertaining to variances or desire representation in proceedings before the Board.

### **Legal Standards for Variances (“Three Step Test”)**

The following points are all drawn from Wisconsin case law, and are the standards under which a variance action would be reviewed by the courts:

*Unnecessary Hardship*- What constitutes a hardship is to be determined from the facts and circumstances of each individual case. The Board must consider the following court-established principles:

1. Unnecessary hardship is a situation where, in the absence of a variance, an owner is unable to use the property for a purpose permitted by the ordinance (use variance), or strict conformity is unnecessarily burdensome (area variance). In most cases, if a property already is developed and has an established use, it is unlikely that a hardship will exist.
2. The hardship must be peculiar to the zoning parcel in question and different from other parcels, not one that affects all parcels similarly.
3. Loss of profit or financial hardship is not in and of itself grounds for a variance. The fact that developing in compliance with ordinance requirements may cost considerably more does not constitute a hardship.
4. Self-imposed hardship is not grounds for a variance. When conditions giving rise to the need for a variance were created by the property owner or a former owner, the hardship is self-imposed.
5. The Board is to consider the underlying purpose of the ordinance standards in considering whether a hardship is present.

*Unique Property Limitation*- Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of the property.

*Protection of the Public Interest*- Granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public interest will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only the **minimum relief** necessary to allow reasonable use of property.

Several recent Wisconsin cases clearly illustrate some of the above principles. They are described in brief herein only because they have similarities to many of the variance requests that a county might typically receive, and to illustrate the extent to which the courts intended variances to be the exception, not the rule:

1. In one case, a property owner sought to add a deck to a lake home. The house met the 75-foot setback requirement; the proposed deck would have resulted in a setback of 64 feet from the ordinary high water mark. The house had been on the property for 60 years, and there was a slope extending from the house to the water's edge. The Board of Adjustment approved the variance, finding that, among other things, the request was "modest", that there were many other properties closer to the lake than the applicant, and due to the slope the deck provided greater safety. The Wisconsin Supreme Court overturned the decision, finding that because reasonable use had been made of the property for 60 years without the deck, no hardship could be said to exist.
2. In another, a property owner was granted a variance to build a house that was larger than the available building envelope on the property. The Wisconsin Supreme Court overturned the variance, stating that the owner had failed to demonstrate that no other house plan could be accommodated on the property within the setback limitations.

## VARIANCE

A variance is a relaxation of a dimensional standard in land use regulations (e.g., setbacks, lot area, height, etc) or a use standard (e.g., types of land uses described for restricted zones in the Zoning Code). Variances are decided by the 5-member Board of Adjustments, which is appointed by the County Board of Supervisors. The Board of Adjustments is known as a quasi-judicial body because it functions almost like a court. Its decisions must comply with specific criteria provided in state laws. The Board of Adjustments must apply county ordinance provisions as they are written. Its job is not to compromise for a property owner's convenience but to apply appropriate legal standards to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

## PROCESS

At the time of application you will be asked to:

1. Complete an **application form** and submit a fee (**non-refundable**);
2. Provide **detailed plans** describing your lot and project (location, dimensions, and materials);
3. Provide a **written statement** showing that your project meets the legal criteria (three step test) for a variance; and
4. **Stake out** lot lines, proposed building footprint and all other features of your property related to your request so the Board may inspect the site.

Upon submission of your variance application, the Zoning Office will publish notice of your request for a variance in the County's official newspaper noting the location and time of the required public hearing. The burden will be on you as property owner to provide verifiable facts upon which the Board will base its decision. At the hearing you may appear in person or be represented by agent or attorney. If any of these requirements are not met or if you or your agent do not appear at the public hearing, the Board shall deny your request for a variance and your fee will be forfeited.

## IF YOU QUALIFY FOR A VARIANCE

- § The Board may grant only the **minimum variance**, which preserves a reasonable use of a parcel for its owner.
- § The Board may impose **conditions** on project design, construction activities, or operation of a facility to assure that public interests are protected.
- § In the case of shoreline variance requests, the Board shall require shoreline buffer mitigation if the project involves construction or expansion of a non-conforming principal structure (existing dwelling closer to the water body than the required setback). Mitigation is required pursuant to Sec. 38, Div. 27 of the Zoning Ordinance, and does include the following:  
Mitigation is required to compensate for lost shore buffer area functions when nonconforming structures are improved or expanded within the shore setback area and is required when the enclosed living space of conforming principal structure is expanded by more than 50 percent, or when the principal structure is removed and replaced with a principal structure of equal size or larger. A person proposing such improvement or expansion shall submit a mitigation plan and implementation schedule for approval by the Zoning Department.

The plan shall meet the Washburn County Shoreline Buffer Mitigation Standards of Sec. 38-596(12).

- a. The associated, private-owned wastewater treatment system must be evaluated and upgraded as appropriate (DCOMM 83.055(3)(b)(1&3).
- b. Native vegetation and water quality protection functions of the shore buffer area must be restored to the extent practicable. Shoreland buffer zone standards of NR 115 in effect on the date of adoption of this amendment shall be held as the required standard: Current NR 115 Minimum Standard of 35 foot buffer with no more than one 30-foot access corridor.
- c. Nonconforming accessory structures must be removed from the shore setback area.
- d. Standard erosion and storm water runoff control measures must be implemented.

§ A variance **decision may be appealed to circuit court** by an aggrieved party within 30 days of filing of the decision in the office of the Board. You are warned that aggrieved persons may appeal any decision of the Board, which grants a variance. As such, Board decisions should not be considered final until the passage of thirty (30) days after the filing of the Board's written decision. Applicants may want to delay building activity pending the end of said appeal period or until all appeal rights have been exhausted to avoid being ordered to restore property to its pre-application state.

§ Because the property rather than its owner qualifies for a variance (unique property limitations test), a variance **transfers to subsequent property owners, unless otherwise restricted by the Board.**

## JUDICIAL REVIEW

Following are the general review standards, which courts have used to decide appeals of Board of Adjustment decisions. You might consider these points to determine whether any decision you have an interest in is likely to be reversed on appeal.

§ Did the Board decide a matter, which it is empowered by statute or ordinance to act on (**subject matter jurisdiction**)?

§ Did the Board follow **proper procedures** (e.g., notice, hearing, reviewable record, open meeting laws, etc.)?

§ Did the Board apply **proper standards** in making the decision?

§ Was there a **rational basis** for the decision (could a reasonable person have reached this conclusion)?

# Application for a Variance from the Washburn County Board of Adjustments

The applicant must demonstrate that: (1) compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would prevent the owner from using the property for a permitted purpose (use variance), or would render conformity with such restrictions unnecessarily burdensome (area variance). Further, the applicant must prove that (2) there is an unnecessary hardship related to physical limitations of the property, not the circumstances of the applicant, and that (3) the proposal will not be contrary to the public interest. These three legal standards are sometimes referred to as the "three step test". A more detailed explanation of these criteria is included in this application packet. By signing this application, you acknowledge that you have read and understand the criteria. **For a complete application, you must address how you meet the "three step test" (you may use a separate sheet).**

**PLEASE NOTE:** You must contact your Town Clerk and attend your local Town meeting to present your proposed plans to the Town Board prior to the County Board of Adjustments Public Hearing. Failure to do so could result in delay or denial of your request. The Board will request input from the Town. **The Town will not schedule you for their meeting until they have received your paperwork from the Zoning Office. When you contact the Town, you should verify that your paperwork has been received.**

Date of application \_\_\_\_\_

Property owner \_\_\_\_\_ Phone # (\_\_\_\_) \_\_\_\_\_

Address \_\_\_\_\_

Type of Variance Requested (check one)

- Road setback reduction: Road name \_\_\_\_\_ Setback requested \_\_\_\_\_ feet from centerline.
- Navigable water setback request: Name of water body \_\_\_\_\_ Setback requested \_\_\_\_\_ feet from ordinary high water mark (OHWM).
- Variance from dimensional standards of Zoning Ordinance.
- Variance from use standards of Zoning Ordinance.
- Other (describe): \_\_\_\_\_
- Variance for mobile home manufactured before June 15, 1976, pursuant to Sec. 38-550 of the Washburn County Code. **(You must provide pictures of the mobile home and proof of manufacture date.)**

Sections (s) of Zoning Code from which variance(s) is/are requested: \_\_\_\_\_

Present improvements (attach a concise plot plan) \_\_\_\_\_

Proposed improvements \_\_\_\_\_

Reason for request \_\_\_\_\_

I agree to allow County officials charged with administering County Ordinances, or other authorized persons, including the assessor, to have access to the above-described premises at any reasonable time for the purpose of inspection. Further, I acknowledge that approval of this variance does not eliminate the need to obtain a land use permit from the Zoning Office and any applicable State or Town permits, and that in the event this variance is not implemented within two (2) years of the date of its decision, this variance shall be null and void and a new variance shall be required.

\_\_\_\_\_  
(Applicant or representative signature) (Print Name) (Date signed)

(Mailing address and phone # if different than above)

## OFFICE USE

Application # \_\_\_\_\_ Non-Refundable Fee \_\_\_\_\_ Map # \_\_\_\_\_ Record Id# \_\_\_\_\_  
Property Description \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4, Sect. \_\_\_\_\_ Twp. \_\_\_\_\_ R. \_\_\_\_\_  
Town of \_\_\_\_\_ Fire # \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_  
Subdivision \_\_\_\_\_ Lot size \_\_\_\_\_ acres. Zoning Dist. \_\_\_\_\_  
Dates Published \_\_\_\_\_ Hearing Date \_\_\_\_\_  
Variance from \_\_\_\_\_ (Sect./Div.) of Zoning or \_\_\_\_\_ Ordinance.

# PLOT PLAN

A **plot plan** must show all of the following information. Please check the box to verify that you have included each item. If the situation does not apply, write "N/A".

**Show the location of:**

- Well
- Septic tank, holding tank or drainfield
- Existing and proposed structures with dimensions noted
- Lakes, ponds, streams, rivers, wetlands and flowages
- Driveway and turnaround (if applicable) with length and width noted
- All public roads

**Show distance of any existing or proposed structure (including new additions) from:**

- Ordinary high water mark of all lakes, ponds, streams, rivers, and flowages
- Wetlands
- Centerline and/or right-of-way of any public road
- Side and rear property lines
- Other structures

**Plot Plan - MUST SHOW ALL OF THE ABOVE (you may use a separate sheet, 8 ½ X 11 format appreciated)**

*North*



# Decision of Board of Adjustments - Washburn County, Wisconsin

## Findings of Fact

Upon the basis of the contents of the variance application, the Zoning Code, state law, and the testimony and exhibits entered into the record, the Board *[makes the attached Findings of Fact] [in reliance upon the facts set forth in the record, issues the following decision].*

## Conclusions of Law

**VARIANCE** – The variance must meet all three of the following tests:

1. That this is a case involving a proposed variance from dimensional requirements of the Zoning Code. *[or]*  
  
That this is a case involving a proposed variance from use requirements of the Zoning Code. *[Strike whichever is inapplicable]*
2. That the applicant **[has] [has not]** demonstrated an unnecessary hardship because:
  - a. There **[is] [is not]** proof of existence of a condition unique to the property.
  - b. The condition demonstrated **[is] [is not]** personal to the applicant.
  - c. The condition demonstrated **[is] [is not]** a mere inconvenience.
  - d. The condition demonstrated **[is] [is not]** self-created.
3. That the hardship consists of a situation where under compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk, or density **[will] [will not]** unreasonably prevent the owner from using the property for a permitted purpose or **[will] [will not]**, in the absence of a variance, be such that no reasonable use may be made of the property. *[Strike whichever is inapplicable]*
4. That the variance requested is from the following section(s) of the Zoning Code: \_\_\_\_\_  
\_\_\_\_\_.
5. That the proposed variance **[will] [will not]** detract from the purpose of the Zoning Code and **[will] [will not]** be contrary to the public interest.

**Order and Determination**

On the basis of the above Findings of Fact, Conclusions of Law, and the record in this matter, the Board orders:

**VARIANCE** – The requested variance is **[denied] [granted] [granted in part]** subject to the following conditions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The Zoning Administrator is directed to issue a zoning permit incorporating these conditions.

Any privilege granted by this decision must be exercised within 24 months of the date of this decision by obtaining the necessary building, zoning, and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

This Order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

**BOARD OF ADJUSTMENTS**

By: \_\_\_\_\_, Chairperson

Date: \_\_\_\_\_

This decision may be appealed by filing an action in certiorari in the Circuit Court for this County within 30 days after the date of filing of the decision.