

ZONING VARIANCE Notice for Applicants

Variance

A variance is a relaxation of a dimensional standard in a land use ordinance (e.g., setbacks, lot area, height, etc.). 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 and the local ordinance 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 \$100.00 fee;
2. **provide detailed plans** describing your lot and project (location, dimensions and materials);
3. **provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance (Three Step Test below) 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 clerk's office will publish notice of your request for a variance in the Village's official newspaper, the Ashwaubenon-Howard-Suamico Press, noting the location and time of the required public hearing before the zoning board. Your neighbors and any affected state agency will also be notified. The burden will be on you as 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. If any of these requirements are not met or if you or your agent do not appear at the public hearing, the board must deny your request for a variance and your fee will be forfeited.

Three-Step Test

To qualify for a variance, you must meet all three requirements of a three-step test:

1. Unnecessary hardship

Strict application of an ordinance requirement (dimensional standard) will result in unnecessary hardship. Wisconsin case law describes hardship as being *present where, in the absence of a variance, no reasonable use can be made of the property*. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then the test is not met and a variance cannot be granted. An applicant may not claim hardship because of conditions which are self-imposed or created by a prior owner (for example, splitting a lot to create two substandard lots and then claiming hardship). Courts have also determined that loss of profit or financial hardship do not, by themselves, justify a variance. Decks and similar minor accessory structures are not essential to the reasonable use of property and are not eligible for variances.

2. Hardship due to unique physical limitations of the property

The hardship is due to unique physical limitations of the property, i.e. compliance with the ordinance is prevented by limitations of the property (steep slopes, wetlands, etc.) that are not generally shared by other properties. 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. Minor property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amendment of the ordinance.

3. No harm to public interests

A variance may not be granted which results in harm to public interests. In applying this test, the board must consider impacts of the proposal and the cumulative impacts of similar projects on the interests of the community (not just patrons or clientele). These interests are listed as objectives in the purpose statement of the ordinance and, for shoreland zoning ordinances, include prevention and control of water pollution; protection of spawning grounds, fish and aquatic life; control of building sites, placement of structures and land uses and preservation of shore cover and natural beauty.

If Your Property Qualifies for a Variance

- **Minimum variance.** The board may grant only the minimum variance that preserves a reasonable use of a parcel for its owner.
- **Conditions on development.** It may impose conditions on project design, construction activities or operation of a facility as mitigating measures to assure that public interests and neighboring properties are protected.
- **Appeals.** 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. For this reason you may choose to delay construction on your project until after the appeal period has expired in order to minimize the risk that the court may overturn the board decision and void your variance.
- **Transfers of rights.** Because a property rather than its owner may qualify for a variance (unique property limitations test), a variance transfers with the property to subsequent owners.

Judicial Review

Following are general review standards that courts have used to decide appeals of board of adjustment decisions. You might consider these points to determine whether any decision of interest to you is likely to be reversed on appeal.

- ✓ **Subject matter jurisdiction**
Did the board decide a matter that it is empowered by statute or ordinance to act on?
- ✓ **Proper procedures**
Did the board follow proper procedures (notice, hearing, record of decision, open meeting law)?
- ✓ **Proper standards**
Did the board apply proper standards in making the decision (3 step test for a variance)?
- ✓ **Rational basis**
Could a reasonable person have reached this conclusion (rational basis for the decision)?
- ✓ **Evidence in the record**
Do facts in the record of the proceedings support the decision?