

Dodge County

Land Resources and Parks Department

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Zoning Variance - Notice and Application

A variance is a relaxation of a dimensional standard in the Land Use Code (i.e. setbacks, lot area, height, etc.) Variances are decided by the Board of Adjustment that must follow rules of due process and functions almost like a court. The board's duty is not to compromise ordinance requirements for a property owners convenience but to apply legal standards for granting of a variance to a specific fact situation. Variances are meant to be an infrequent remedy where the code imposes a unique and substantial burden on use of a property. It is not appropriate to contact individual board members regarding a pending decision. You will be asked to provide written materials and testimony at the public hearing in support of your petition for a variance.

Process

At the time of application you will be asked to:

1. Complete a variance application form and submit a application fee;
2. Provide detailed plans describing your lot and project (location, dimensions, materials, limiting site conditions, etc);
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 your lot lines, the proposed building footprint and other features of your property related to your request so that the Board may inspect the site;

After a complete application is received by the Land Resources and Parks Department, the department will publish a notice of your request for a variance in the county's official newspaper describing your project and noting the location and time of the required public hearing before the Board of Adjustment. All neighbors located within 300 feet of your property boundaries and any affected state or federal agency will also be notified of your request.

The board may conduct an onsite inspection of the site prior to the public hearing therefore it is important to have your lot lines, the proposed building footprint and any other features of your property related to your request staked.

You will be required to provide information at the public hearing to show that you qualify for a variance. At the public hearing, you and other interested parties may appear in person or may be represented by an agent or attorney. If you or your agent do not appear at the public hearing, the board must deny your request for a variance and your application fee will be forfeited.

At the beginning of the public hearing, the chairman will read the public hearing notice and a staff report prepared by the Land Resources and Parks Department staff will be presented to the board. The applicant and or their agent will then be asked to come forward and to provide information to the board regarding the variance request. To qualify for a variance, the applicant has the burden of proof to demonstrate that all three of the following criteria as defined in the state statutes are met:

Three-Step Test

1) Unnecessary Hardship;

The Wisconsin Supreme Court distinguishes between an area and use variances when applying the unnecessary hardship test. Use variances permit a landowner to put a property to an otherwise prohibited use. Area variances provide an increment of relief (normally small) from a physical dimensional restriction such as a building or height setback.

For a use variance, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance. What constitutes reasonable use of a property is a question that the board must answer on a case-by-case basis. If the property currently supports a reasonable use, the hardship test is not met and a variance can not be met. If a variance is required to allow reasonable use of a property, only that variance which is essential to support reasonable use may be granted. Wisconsin Case law describes hardship as being present where, in the absence of a variance; no reasonable use can be made of the property. In some more extreme cases, open space uses may be the only reasonable use of a property while in

others a scaled down home and some relaxation of a setback requirement may provide a reasonable use. The board will balance public interests in preserving the objectives of the code and private interests in a property in determining which uses are reasonable. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then this test is not met and a variance cannot be granted.

For an area variance, unnecessary hardship exists when compliance with the code would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such restrictions “unnecessarily burdensome.” To determine whether this standard is met, the board will consider the purpose of the zoning district in question, its effects on the property, and the short-term, long-term, and cumulative effects of granting the variance.

2) Hardship due to unique physical limitations of the property;

To qualify for a variance, the hardship must be due to a unique physical limitation of the property, i.e. compliance with code requirements is prevented by limitations (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 code violations, prior variances or lack of objections from the neighbors do not provide a basis for granting a variance. Minor property limitations that prevent code compliance and are common to a number of properties should be addressed by a code amendment and not a variance. An applicant may not claim hardship because of conditions which are self-imposed or created by a prior owner (for example, constructing a deck or shed within setback lines without a permit and then arguing there would be a financial hardship if you were ordered to remove it). Courts have determined that loss of profit or a financial hardship does not, by themselves, justify a variance. Courts have also found that decks and similar minor accessory structures are not essential to the reasonable use of a property and are not eligible for variances. The board may ask the applicant to explain what conditions are unique to this property rather than considerations personal to the property owner that result in an unnecessary hardship and that would suggest the variance to be granted.

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 will consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community. These interests are listed as objectives in the purpose statement of the code and may include general public health, safety and welfare as well as more specific issues such as environmental protection, clean drinking water and other concerns. The board may ask the applicant to comment on how they believe the interest of the public or neighbors will be affected by granting or denying the variance request.

If your property qualifies for a variance

- The board may grant only the minimum variance that preserves a reasonable use of the parcel for its owner;
- The board may impose limitations on project design, construction activities or operation of a facility as mitigating measures to assure that public interests and neighboring properties are protected;
- A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing the decision in the office of the board. You should consider delaying construction until the appeal period has expired to minimize the risk that the court may overturn the board decision and void your variance.
- Because a property (rather than its owner) may qualify for a variance, a variance transfers with the property to subsequent owners.

After the board completes its questioning, the floor will be open to anyone in the audience wishing to speak or ask questions on the variance request. Following the public input, the applicant will have a final opportunity to address the board regarding the variance request. After all testimony is given, the public hearing will then be closed by the chairman and the board will review the facts presented at the public hearing and will make a decision on the variance request. A written decision will be filed in the office of the board and will be sent to the applicant and any other party requesting a copy of the decision. If you have any questions regarding the decision you are directed to contact the Dodge County Land Resources and Parks Department for assistance. **PLEASE NOTE:** A variance decision may be appealed to circuit court by certiorari by any aggrieved party within 30 days of the filing of the written decision in the office of the board.



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AND PARKS DEPARTMENT**
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τ THIS AREA FOR OFFICE USE ONLY τ	
Activity No.	Issue Date:
Application Date:	Receipt #:

Variance Application

Application Fee: \$450 (*After the Fact Application Fee: \$900*)

Names and Mailing Addresses	Property Description						
Applicant (Agent)	Parcel Identification Number (PIN)						
Street Address	Town						
City • State • Zip Code	¼	¼	Section	T	N	R	E
Property Owner (If different from applicant)	Subdivision or CSM #						
Street Address	Site Address						
City • State • Zip Code	Is this property connected to public sewer? <input type="checkbox"/> Yes <input type="checkbox"/> No						
Present property use:							
List any prior variances that have been granted or denied for this property:							
Describe all nonconforming structures and uses on this property:							
List the terms of the Land Use Code for which you are requesting a variance (section # and code provision requirements):							
Variance Requested:							
Address the following variance criteria described in the application materials. (Attach additional sheets if necessary):							
What unnecessary hardship is present that prohibits your compliance with the terms of the Land Use Code?							

What unique features of this property prevent you from complying with the terms of the Land Use Code?

Will denial of the variance request prevent you from using this property for a permitted purpose or render conformity with the Code unnecessarily burdensome? Why?

How would the interest of the public or neighbors be affected by granting or denying this variance?

CERTIFICATE

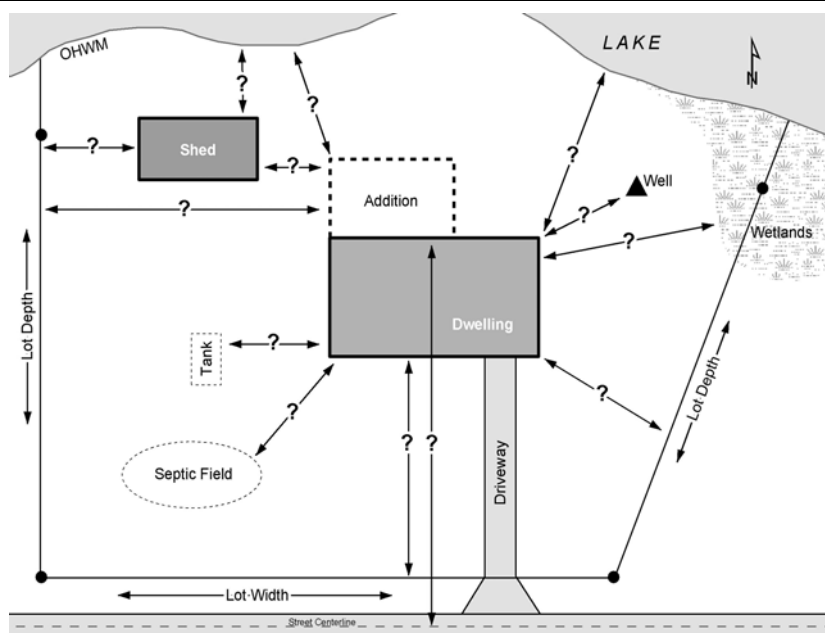
I hereby certify that I am the owner and/or authorized agent of the property owner and that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief and I hereby authorize members of the Dodge County Land Resources and Parks Department and members of the Dodge County Board of Adjustment to enter the above described property for purposes of obtaining information pertinent to my application/appeal/variance request.

Signature of owner or authorized agent: _____ Date: _____

Daytime Contact Number (_____) _____ - _____

SITE PLANS AND BUILDING PLANS

- All applications must be accompanied by a site plan. Figure 1 below is an example of an acceptable plan.



Site plans must be drawn to scale and/or all dimensions given, such as:

- Location and dimensions of the project
- Location and dimensions of existing structures
- Dimensions of the property
- Location and names of abutting roads, lakes & Streams
- North arrow
- Owner's name

Distances must be shown from the project to:

- Lot lines
- Road right-of-ways & centerline
- Water bodies Ordinary High Water Mark (O.H.W.M.)
- Septic & holding tanks
- Soil absorption systems
- Nearby structures (within 50 feet)

