

WHAT IS A VARIANCE?

For Petitioner Reference

A variance is an authorization for the construction or maintenance of a building or structure, which is prohibited by a zoning ordinance. It is a right granted by the Board of Adjustments pursuant to power vested by statute or ordinance and is a form of administrative relief from the literal enforcement and strict application of zoning regulations.

VARIANCE STANDARDS

State law sets three standards for granting a zoning variance. The burden is upon the applicant to provide evidence to the board of Adjustments that their situation meets the standards. All three standards must be met in order for a variance to be granted.

- Unnecessary hardship
- Unique property feature
- Not contrary to public interest

1. Unnecessary hardship

Application of the zoning ordinance to the site must cause unnecessary hardship. When does unnecessary hardship occur?

❖ **Denied all Reasonable Use of Property**

The Wisconsin Supreme Court has ruled that unnecessary hardship only exists when the zoning ordinance denies all reasonable use of a property. Board of Adjustment members must judge what a reasonable use for a particular parcel is. They must consider whether the parcel as a whole provides reasonable use to the owner, not just whether a portion of the property can be used, as the applicant wants. Generally, a variance is not warranted if the physical character of the property would allow a landowner to develop or build in compliance with a zoning ordinance.

For example, all reasonable use of a parcel is not denied if the board rejects a variance for a deck to be placed on a site within the shoreland setback. A home without a lakeside deck still offers reasonable use of property.

❖ **No Self-Imposed Hardship**

The Wisconsin Supreme Court also ruled that a hardship may not be self-imposed. An example of a self-imposed hardship would be someone who builds at a setback and later requests a variance for an addition within the setback area. Such a variance should be denied because the applicant created the hardship by building at the setback and restricting future building or expansion options.

❖ **Loss of Profit Not Hardship**

Loss of profit is not in itself an unnecessary hardship, nor is additional expense incurred to comply with zoning ordinances. For instance, limiting the number of units which can be built on a parcel may reduce potential profits, but is not an unnecessary hardship.

❖ **Due to Regulations**

The hardship cannot be one that would have existed in the absence of the zoning ordinance. Some properties may not be buildable because of the physical nature of the property. For instance, if an entire parcel consists of land with a steep slope or is entirely wetlands, the property would not be suitable for development whether or not there was an ordinance regulating such development. In such extreme cases, the only reasonable use may be for an open space uses.

2. **Unique Property Limitations**

Unique physical characteristics of the property must prevent the applicant from developing in compliance with the zoning ordinance.

❖ **Physical Features**

Wetlands, soil type, bedrock, steep slopes and lot shape are some characteristics which may limit use of a property.

❖ **Property Limitations – Not Applicant’s Circumstances**

The property must qualify for the variance, not the situation of the applicant.

❖ **Violations/Previous Variances Not Grounds for Variance**

Existing violations on other properties, or improper variances previously granted, are not grounds for a variance. Applications must be evaluated individually based on the variance standards.

3. **Public Interest Protected**

Granting of a variance must not harm the public interest.

❖ **Look to Ordinance Objectives**

Board members should look to the objectives statement in the local ordinance to determine what constitutes public interest. Local ordinance objectives generally mirror Objectives set forth in state statutes. For example, shoreland zoning protects the public interest in water quality, fish and wildlife resources, shore cover and natural beauty.

❖ **Minimum Relief**

Landowners who do qualify for a variance are to be granted only the minimum relief necessary for them to have reasonable use of their property. The board has the authority to impose conditions on a variance to protect the public interest. Examples of conditions for variances to shoreland standards include such as erosion control measures or vegetative screening.

Required with Application:

1. Provide a copy of a survey (CSM) of property.
2. Have a drawing to scale of property showing existing buildings and proposed buildings as well as the well, septic (mound or alternative systems), easements and ponds.

Required at Hearing:

1. Addition DNR or County permits obtained.
2. Correspondence relevant to the Variance.

Summary:

Applicants must prove their situation meets all three of these standards. If the situation does not meet the three standards mentioned above, the variance will most likely be denied.