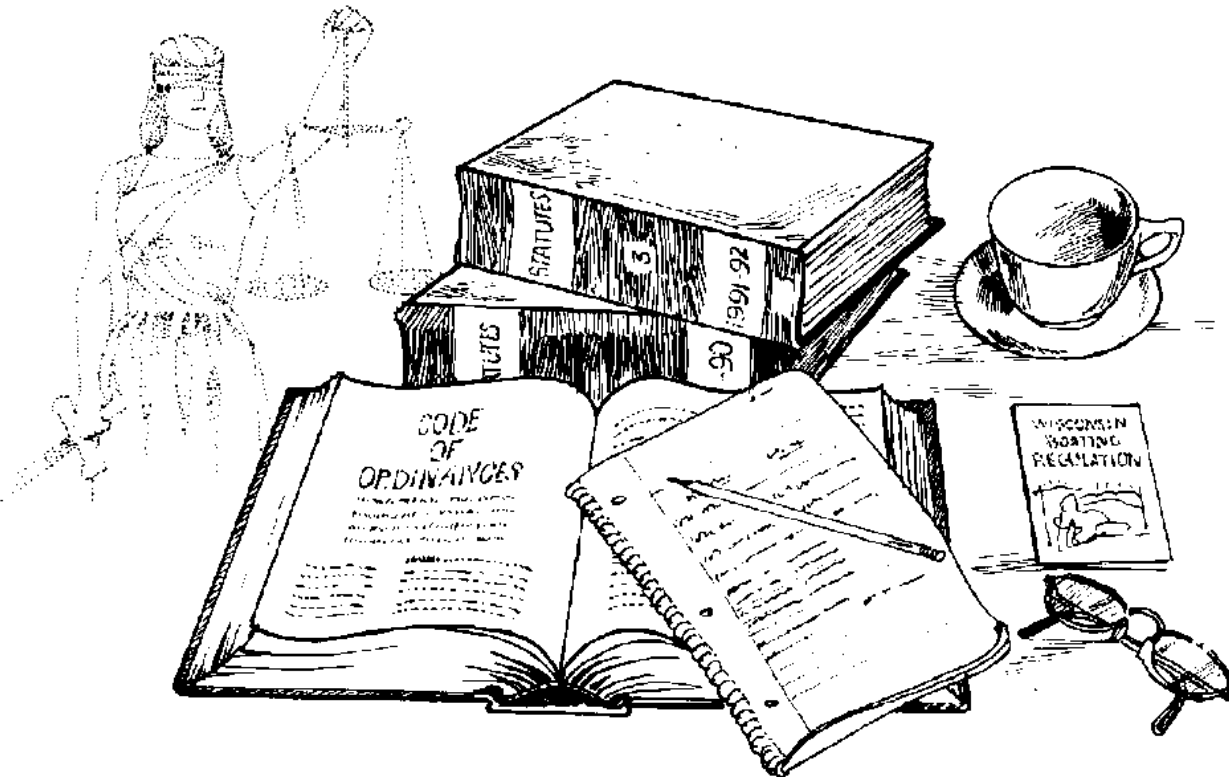


Role of the Zoning Board

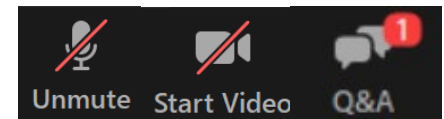
July 11, 2023, 6:00-7:30 pm



Thank you for joining us! The webinar will begin at 6 pm.

Please mute your microphone and turn off your video camera.

We will reserve 15 minutes for questions at the end. Please submit questions using the Q&A.



Lynn Markham
Center for Land Use Education
lmarkham@uwsp.edu



Center for Land Use Education
College of Natural Resources
University of Wisconsin - Stevens Point



Extension
UNIVERSITY OF WISCONSIN - MADISON

Poll

What is your role/position related to zoning?

- Zoning board of adjustment or appeals
- Zoning staff
- Elected official
- Plan commission or zoning committee
- Interested person
- Other

How many people are watching from your site?

- 1
- 2
- 3
- 4
- 5
- More than 5



Webinar Outline

1. Introduction to zoning
2. Role of the zoning board
 - Act like judges: Weigh the evidence; not opinions
 - Does the applicant provide evidence that they meet all legal standards?
3. Decision-making process
4. Variances: 3 legal standards
5. Would you grant these variances?



Purpose of Zoning

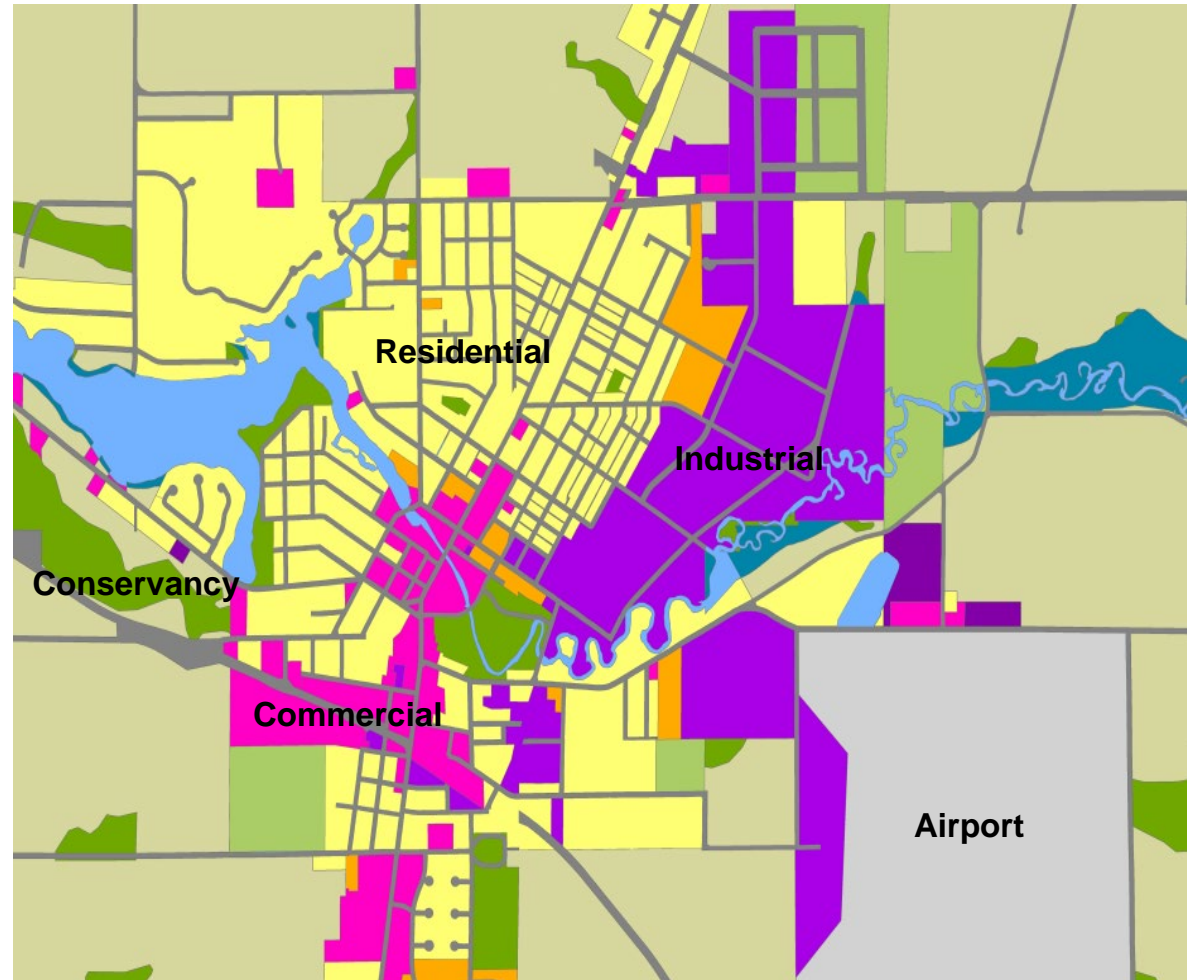


Zoning is one tool to achieve community goals such as:

- Public health, safety, and welfare
- Protect natural resources
- Community character and aesthetics
- Protect public and private investments

A zoning ordinance contains two parts:

Zoning Map
divides the
community
into districts



Uses for each zoning district:

Permitted Use

Use is listed and allowed by right in all parts of the zoning district

Granted by zoning administrator

Conditional Use

Use is listed for the district and may be allowed if suited to the location

Decided by zoning board, plan commission, or governing body

Prohibited Use

Use is not listed for the district or is expressly prohibited

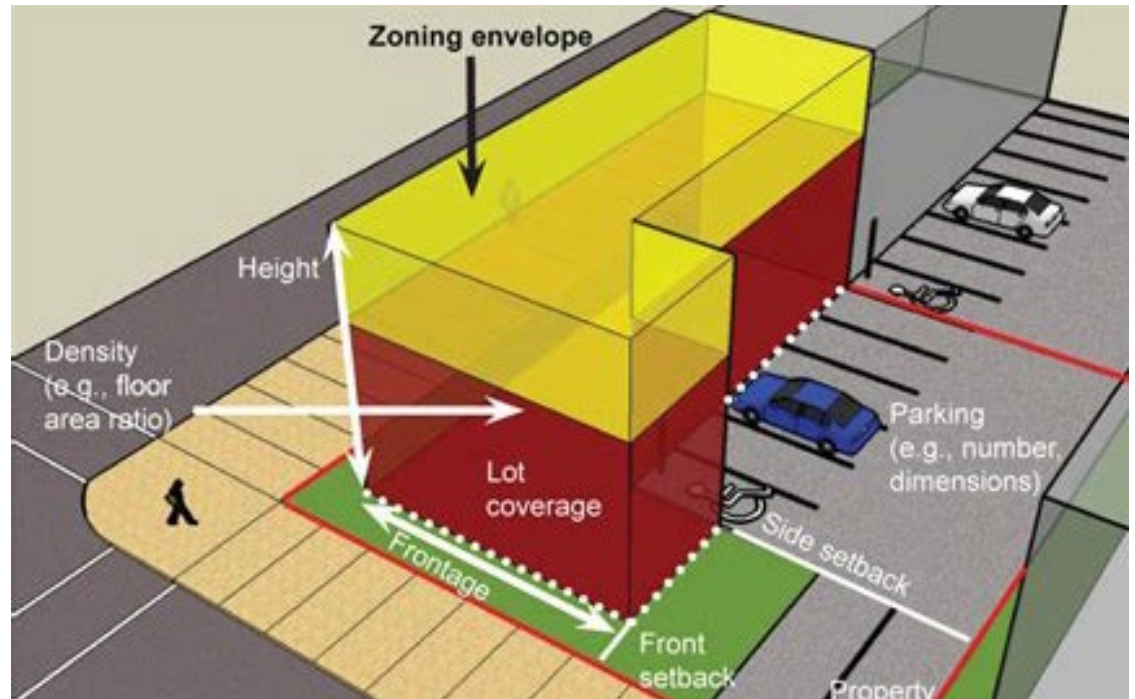
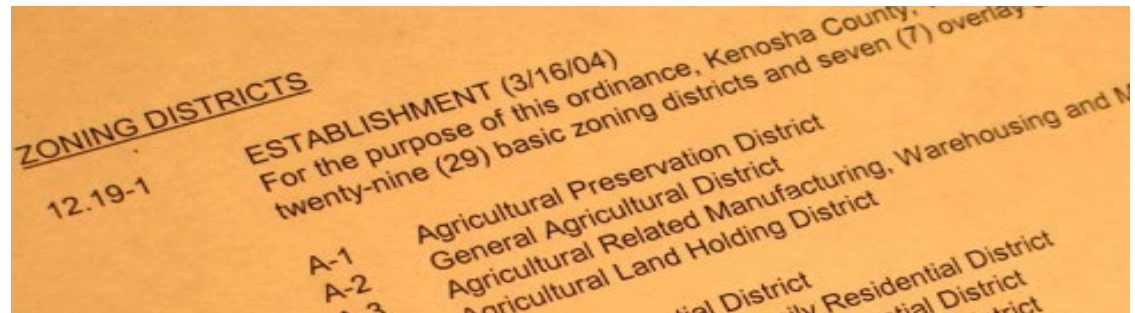
May apply for rezone or use variance, if allowed



A zoning ordinance contains two parts:

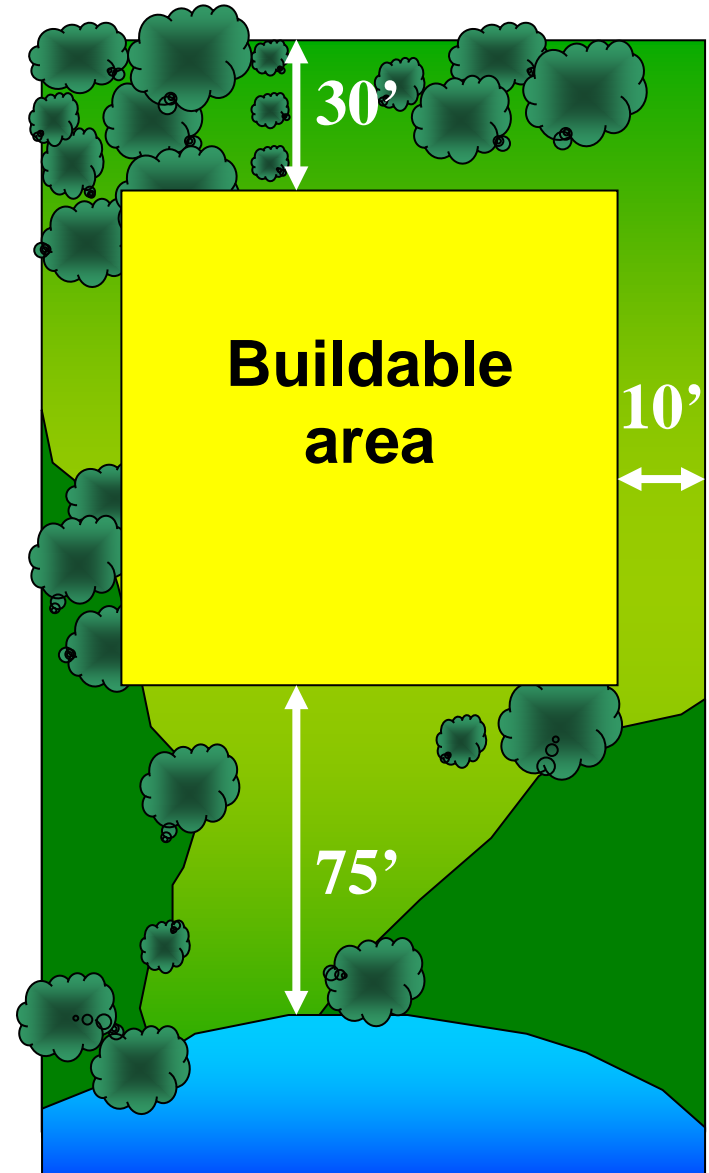
Zoning Text

- purposes
- uses allowed in each district
- dimensional standards i.e. lot size, density, setbacks, etc.
- requirements related to parking, signage, landscaping, etc.
- authority and procedures



Dimensional standards:

- Lot size / density of development
- Size and location of buildings on parcel
 - Setbacks
 - Floor area ratios
 - Building height standards



Overlay zoning

- A special zoning district, placed over an existing base zone(s), which creates special provisions in addition to those in the underlying base zone to protect a specific resource
- Most restrictive standards apply
- Examples
 - Shoreland zoning
 - Floodplain zoning
 - Wellhead protection
 - Airport overlay
 - Bluff zoning
 - Historic overlay
 - Transit corridor



Terminology

State statutes define:

- Counties (and towns) have boards of adjustment
Wis. Stat. s. 59.694, stats. for counties, s. 60.65 for towns
- Cities, villages (and towns) have boards of appeal
Wis. Stat. s. 62.23(7)(e), stats. for cities, s. 61.35 for villages,
s. 60.62 for towns with village powers

Both are commonly referred to as:

- Zoning Board
- BOA, ZBA
- Different from the 'zoning committee'

3 Types of Decisions

- High level of discretion
- Reasonable and constitutional
- Public participation encouraged

Legislative
plan
ordinance
amendment

**Zoning board has limited powers,
defined in state statutes**

- Must apply pre-determined standards
- Conditions may be applied
- Discussion only during the hearing

Quasi-judicial
variance
conditional use
plat review

- Apply ordinance as written
- No additional conditions

Administrative
permitted use

Discretion



Who makes zoning decisions?

■ Legislative ■ Quasi-judicial ■ Administrative

Governing Body



Plans, ordinances,
amendments

Conditional
uses?

Planning and
Zoning Staff



Technical support
including staff
reports & recs

Permitted uses

Plan Commission



Recommendations

Conditional
uses?

Zoning Board



Variances

Administrative
appeals

Conditional
uses?

Zoning roles



Elected officials adopt and amend the zoning ordinance

Zoning board members act like judges and apply the ordinance and state laws

- Let applicants know the zoning board has limited powers and is required to follow the local ordinance and state laws
- Legally defensible decisions: The zoning board can only approve variances when the applicant has met the legal standards
- Only elected officials can change the law

Zoning Board Announcement of Proceedings

This script is meant to be read at the beginning of zoning board of adjustment/appeals meetings so that members of the public who are not familiar with zoning boards learn 1) what a zoning board is 2) what Wisconsin laws require that zoning boards base their decisions on and 3) what to expect during a zoning board hearing.

The zoning board of adjustment/appeals functions like a court, and must follow state laws and local zoning ordinances. The zoning board cannot change or ignore any part of the zoning ordinance or state laws, but must apply the laws as written.

The zoning board may only grant a variance, special exception or administrative appeal if the applicant provides evidence showing that they meet all of the legal standards for that decision. The legal standards the zoning board will use to decide on each application have been provided to the applicant and will be described at this meeting by the zoning board or staff. [Consider adding the highlighted sentences to your variance application form too.]

Each hearing will be opened by reading the application or appeal. The zoning department report will be read, including evidence from the on-site inspection. The applicant will be sworn in and then present the reasons and evidence to support why they think they meet the legal standards for the variance or special exception. The board may ask questions of the zoning staff and applicant. Witnesses will be sworn in and allowed to give testimony related to why the legal standards are or are not met. Once the board has all of the necessary facts, the chair will close the hearing and the board will deliberate and decide in front of the public whether the applicant has met the legal standards. The board will then proceed to the next hearing.

Written decisions based on the evidence at the hearing and whether the zoning board

The zoning board functions like a court

- 1) Zoning boards must follow:
 - state statutes
 - case law
 - local zoning ordinances
- 2) Zoning boards apply these laws to particular fact situations to make *quasi-judicial* decisions
- 3) Must apply the laws as written

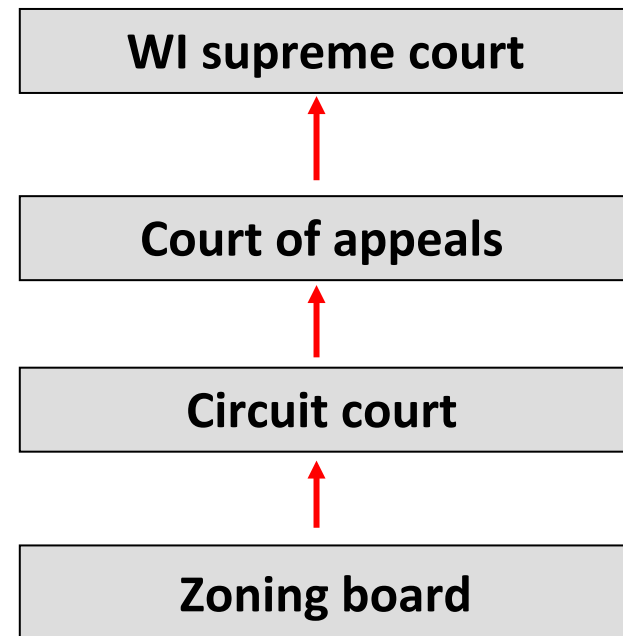


Zoning board members are neutral and weigh the evidence

If you want to change the ordinance, run for elected office

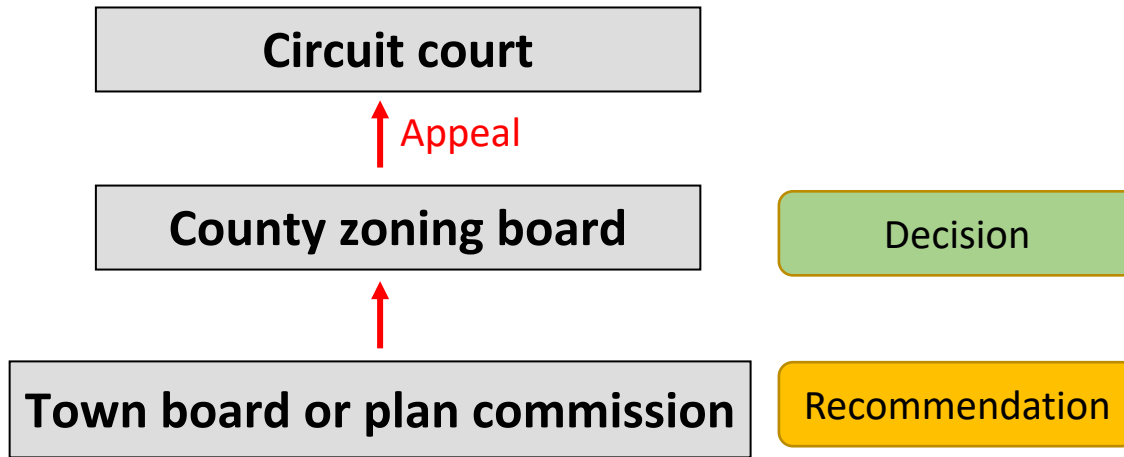
The zoning board functions like a court

- Like court decisions, zoning board decisions can be appealed to higher courts

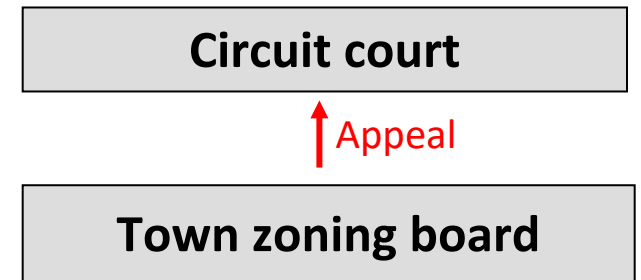


How do towns interact with zoning boards?

County zoning & shoreland zoning

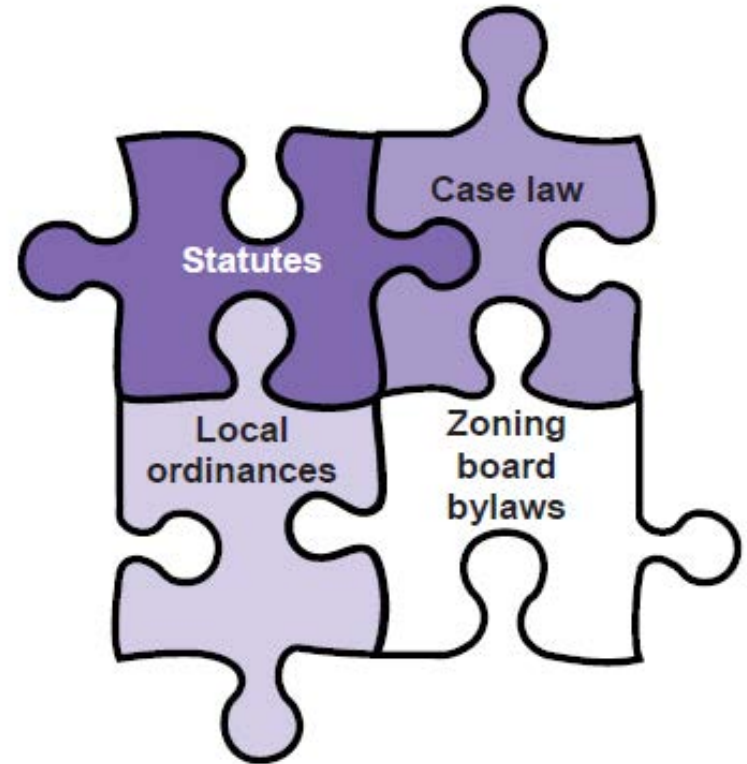


Town zoning



The zoning board functions like a court

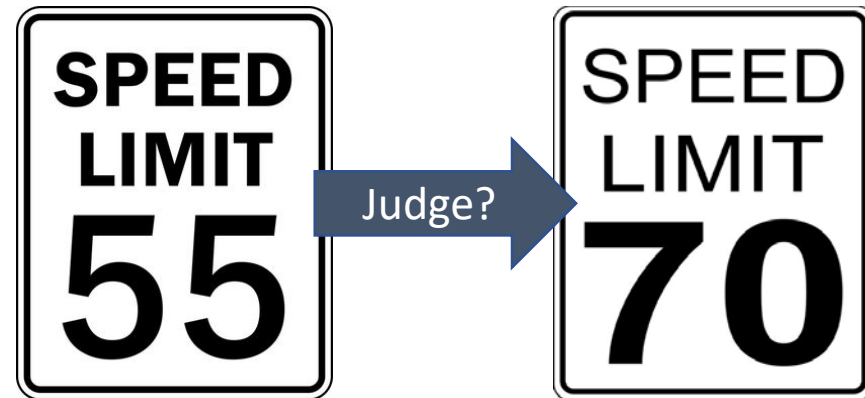
- If the zoning board follows state statutes, case law and their local zoning ordinance, their decisions will generally be upheld
- A solid legal record minimizes legal costs and zoning board reconsideration



The zoning ordinance standard for roadway setbacks is 30 feet. Joe wants a variance so he can build a garage 15 feet from the roadway. No neighbors object to Joe's request. His county board member is in favor of his variance. Many people would like to build closer to the road than allowed by the current setback.

How should the zoning board react to this information...

?



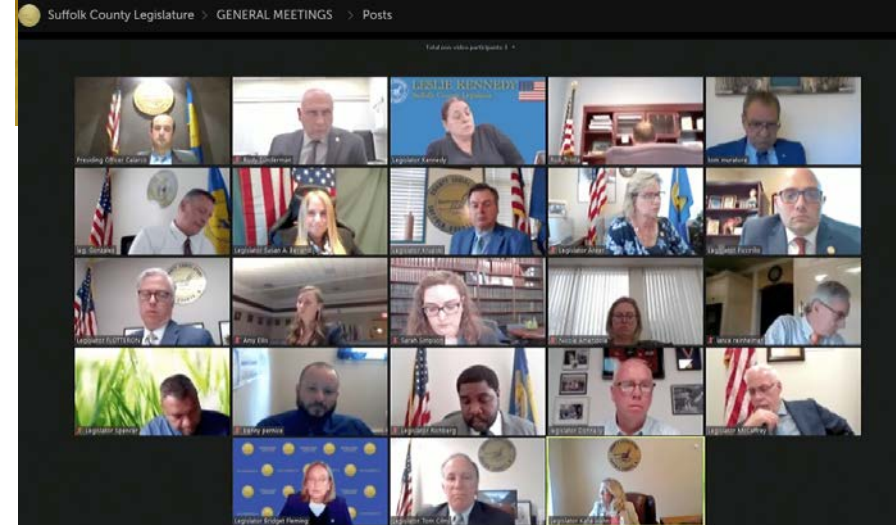
Hint: What would a judge do?

Fairness and due process

Open Meetings

Zoning boards must comply with Wisconsin's Open Meetings Law:

- meetings are open & accessible to the public, including the disabled
- the public is provided with advanced notice of meetings



Open Meetings



Closed sessions are limited by statute:

- Personnel matters including employee performance, compensation, discipline, etc.
- Damaging personal information
- Legal consultation for current/likely litigation
- Others listed at Wis. Stat. §19.85

Decisions to grant or deny a variance, conditional use or appeal may not be decided in closed session

State ex rel. Hodge v. Town of Turtle Lake, 1993

Ex parte communication

- Discussion regarding a pending matter without the other party present; not included in the public record.
- Zoning board members should...
 - avoid it,
 - disclose it &
 - encourage citizens to make important information part of the record.

See Chapter 6 of Zoning Board Handbook for more details

Bias

Zoning board members making quasi-judicial decisions (i.e. variance, conditional use) must not:

- harbor bias
- prejudge the application



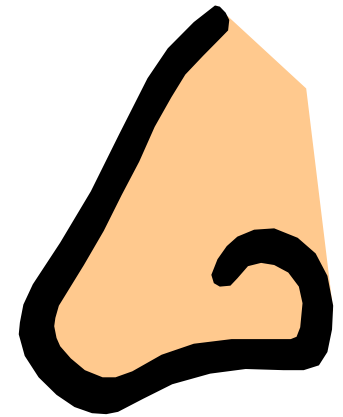
Recuse yourself from decisions that present a conflict of interest or bias (or the appearance of)

- Not the same as abstaining (not voting)
- Do not participate in decision or discussion leading up to decision
- Physically separate yourself from the decision-making body if possible
- If you want to provide testimony, do so as a member of the audience



When to vote and when to recuse yourself

- BOA member should recuse themselves when they cannot be impartial decision-makers
 - it's up to each member to make this decision
- Ask yourself whether the nature of your relationship or dealings with a person or organization could bias your judgment
 - avoid the appearance of bias as well
- BOA members are not required to state their reasons for recusal



Sniff test

When to vote and when to recuse yourself

- Recusal too often may lead to a BOA without enough members to vote
- It should not be used as a way to avoid making tough decisions; that's your job as a BOA member
- Consider strengthening local ordinances, rules and by-laws
- Consult with zoning board attorney if you have questions



Voting Requirements

- If a quorum is present, the BOA may take action by majority vote of the members present

2005 Wisconsin Act 34

- Local rules can be more restrictive
 - i.e. 4 of 5 members

Tip: Use local by-laws or ordinance to clarify how many BOA members must vote to take action.

See Chapter 11 of Zoning Board Handbook for more details

Variances

Allow a landowner to do something prohibited by the zoning ordinance



- Variances provide relief in limited, unusual circumstances
- Variances are not meant to provide general flexibility in ordinances
- Elected officials may revise the zoning ordinance to incorporate the level of flexibility the community supports

For more information about variances,
see Chapter 15 of the *Zoning Board Handbook*

Why do variance decisions matter?



- If the purposes of a zoning ordinance are held in a bucket, and variances are granted that don't meet the legal standards, the purposes of the ordinance (water) leak out and are lost.



Why do variance decisions matter?

General zoning



Purposes for roadway setbacks

- Safety
- Accommodate road widening & utility replacement

Granting variances reduces these purposes

Why do variance decisions matter?

Shoreland zoning

Prevent water pollution
 Protect spawning grounds, fish and aquatic life
 Reserve shore cover & natural beauty

More Impervious Surface = Less Fish

Fish found in streams when impervious surface in the watershed was:

Less than 8%

8 - 12%

Greater than 12%

More Impervious Surfaces in Watershed

Iowa darter
 Black crappie
 Channel catfish
 Yellow perch
 Rock bass
 Horneyhead chub
 Sand shiner
 Southern redbelly dace

Golden shiner
 Northern pike
 Largemouth bass
 Bluntnose minnow
 Johnny darter
 Common shiner

Creek chub
 Fathead minnow
 Green sunfish
 White sucker
 Brook stickleback

Golden shiner
 Northern pike
 Largemouth bass
 Bluntnose minnow
 Johnny darter
 Common shiner

Creek chub
 Fathead minnow
 Green sunfish
 White sucker
 Brook stickleback

Creek chub
 Fathead minnow
 Green sunfish
 White sucker
 Brook stickleback

Fewer Species of Fish



Why do variance decisions matter?

Floodplain zoning

To:

- Protect human life & health
- Minimize property damages & economic losses people



Granting variances reduces protection & increases economic losses

Flooding

In Wisconsin we're seeing:

- more frequent and more intense heavy rainfalls
- a noticeable uptick in the number of flooding events



Two types of variances

A variance allows a property owner to do something prohibited by the ordinance

- **Use variance** permits a landowner to put property to an otherwise prohibited use. Can present problems.
- **Area variance** is a modification to a dimensional, physical, or locational requirement such as the setback, frontage, height, bulk, or density restriction for a structure
 - provides an increment of relief (normally small) from a physical dimensional restriction

Variances

The applicant has burden of proof to show that all three statutory tests are met:

1. unnecessary hardship
2. due to conditions unique to the property
3. No harm to public interest

These three standards apply to variances from all types of zoning

These tests should be clearly listed with space to respond on the variance application & the variance decision form

Is the variance application complete?

- Look at ordinance and application forms to see what's required for an application
- A complete application is needed to make an informed decision: complete forms and site plans
- If an incomplete application makes it to a hearing, the BOA should table it until they get a complete application

Variance Granting Criteria

Please respond to the following criteria established by case law for granting a variance: (please attach additional sheets if necessary)

1. Describe why you feel there is "unnecessary hardship", which is defined as complying with the petitioned ordinance standard would unreasonably prevent you from using the property for a permitted use or would render conformity with such restrictions unnecessarily burdensome.

2. Describe what unique property limitations exist that prevent ordinance compliance and are not common to adjacent properties.

3. Describe how you consider the hardship under both items above is not self-created.

4. Describe how you feel the granting of this variance would not harm public interests as you consider the general purpose of the ordinance and the specific provision being petitioned.

Along with this application and filing fee, please include a scaled drawing that includes at least the following:

1. The location and size of the property, including all lot line dimensions.
2. Indicate north.
3. Show the location and names of all surrounding public roads/highways.
4. Show the location of all area lakes, ponds, rivers or streams.
5. Indicate all existing buildings, wells and private septic systems.
6. Show the requested change or construction and include the following measurements:
 - a) Distance from the centerline of all public roads/highways
 - b) Distance from the right-of-way of all roads/highways
 - c) Distance to all lot lines
 - d) Distance to all lakes, ponds, rivers or streams
 - e) Distance from existing private septic tanks and fields
 - f) Distance from existing wells

Variances

Conditions unique to the property test

Conditions unique to the property such as steep slopes or wetlands, that prevent compliance with the ordinance

These properties all have steep slopes, so it would not be unique



Variances

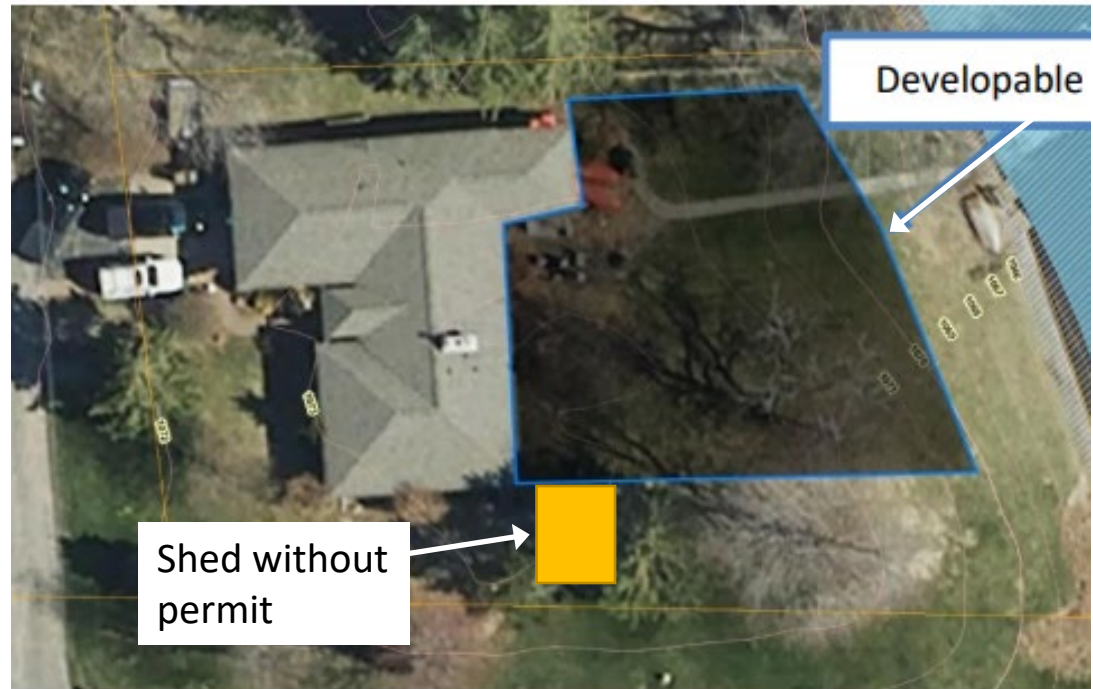
Conditions unique to the property test

Lot setbacks

- Streets: 25'
- Shoreland: 30'

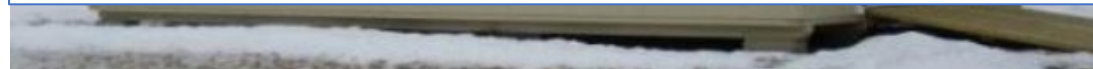
Owner says property is unique due to steep slope (4%), trees & shoreline

- Are these conditions unique to this property, and do they prevent building in a compliant location?
- If not, building shed in compliant location is a personal inconvenience, not an unnecessary hardship



Slope Suitability for Urban Development: Slopes Suitable for Development

Limitations	Suitability Rating	Residential
Slight	Optimum	0-6%
Moderate	Satisfactory	6-12%
Severe	Marginal	12-18%
Very Severe	Unsatisfactory	>18%



Variances

Conditions unique to the property test

- Circumstances of an applicant such as a growing family or need for a larger garage or boathouse, are not a factor in deciding variances



Variances

Public interest test



- A variance granted may not harm public interests
- “Public interests” are the purpose and intent of the ordinance that were adopted by the elected officials representing the community
 - **Example**
- List ordinance purposes on your community’s variance application form and variance decision form
- Short-term, long-term and cumulative impacts of variance requests must be considered. Zoning staff can provide an impact analysis.

Variances

Unnecessary hardship test for area variances

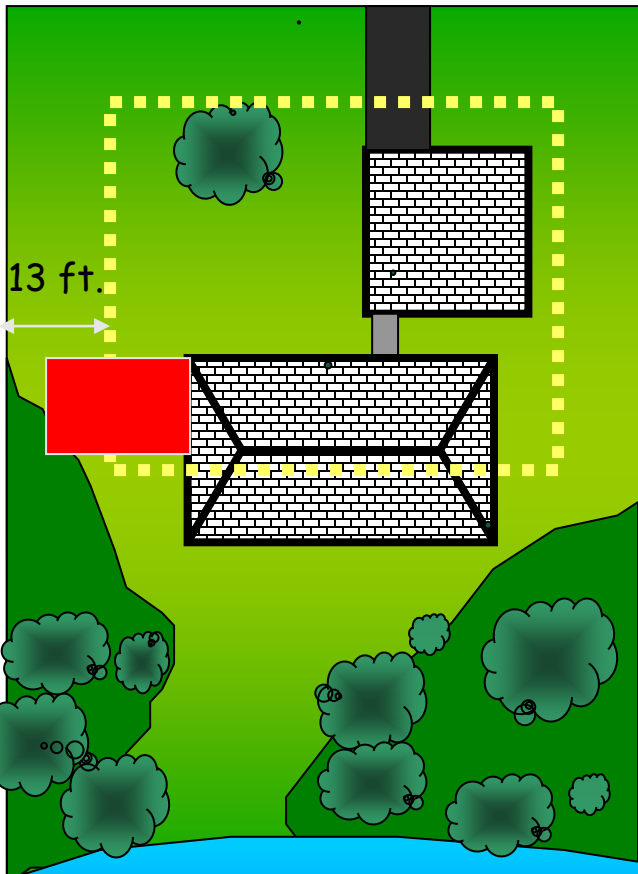
- Unnecessary hardship = when compliance with the ordinance would:
 - unreasonably prevent the owner from using the property for a permitted purpose, or
 - be unnecessarily burdensome in view of ordinance purposes



Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.

Do family rooms qualify for unnecessary hardship?

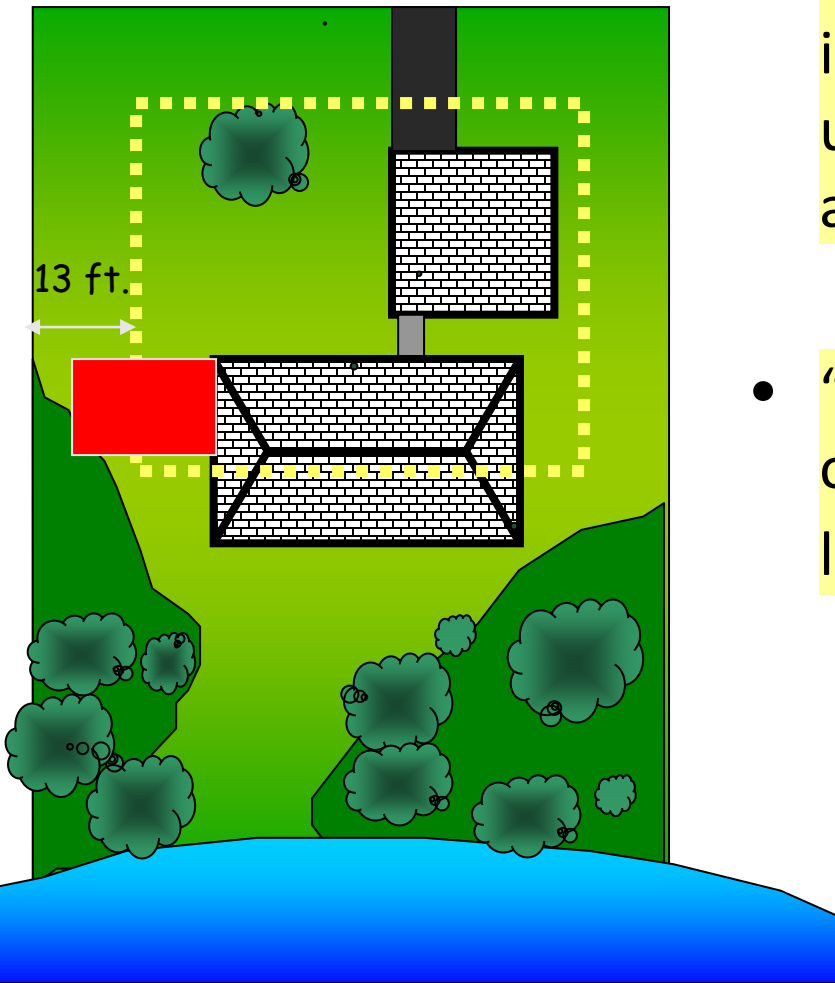
- Should an after-the-fact variance be granted for the family room (shown in red) because removing it would be an unnecessary hardship?
- The WI Supreme Court said NO because the “hardship was self-created and the porch no more than a personal convenience”.



Snyder v. Waukesha County Zoning Board, 1976

Do porches qualify for unnecessary hardship?

- “Growth of a family and personal inconvenience do not constitute unnecessary hardship which justifies a variance.”
- “It is not the uniqueness of the plight of the owner, but uniqueness of the land which is the criterion”.



Variance case law

- Self-created hardship: an applicant may not claim hardship because of conditions created by his or her actions
- Loss of profit or financial difficulty do not constitute hardship
- A zoning board may consider an error of local government staff when deciding whether to grant a variance
- Lack of objections from neighbors does not justify a variance
- Nor do nearby ordinance violations
- A variance runs with the property to all future property owners

A variance case law summary like this is valuable to include on the variance application & the variance decision form. See examples on webinar resource page.

Do porches qualify for unnecessary hardship?

Owner says not having a porch will be an unnecessary hardship because:

1. the porch, substantially to be removed
2. the lot is substandard in
3. the porch could not be of the home
4. owner needs the porch his family including six
5. porch would add to the

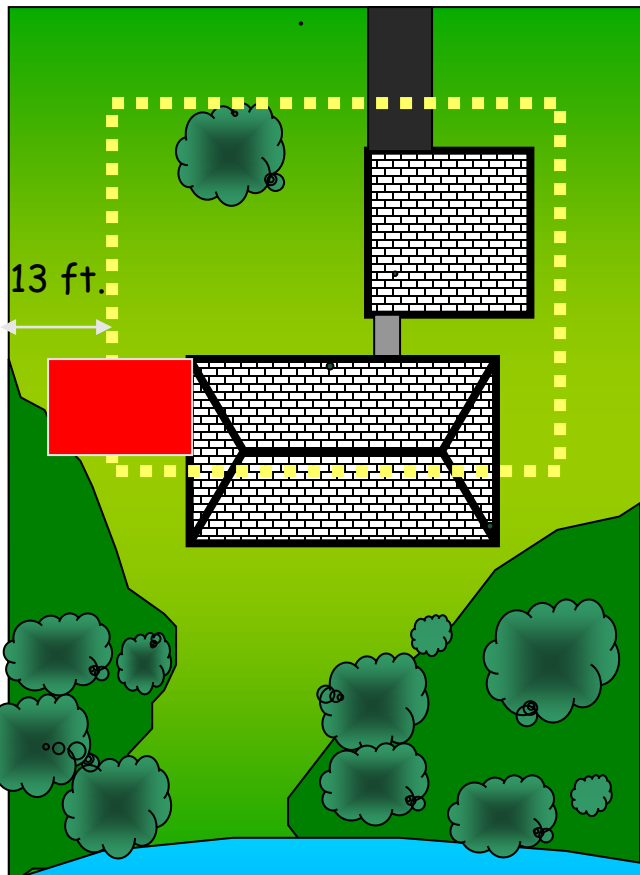
Self-created hardships don't count

Treated the same as other substandard lots

Porch may not be feasible at all on this property

Hardship is based on property, not applicant

Loss of profit is not hardship



Poll: What if 10 nearby neighbors come to a variance hearing and they all state their opinion that the proposed variance is fine. Is this sufficient reason to grant the variance?



Yes



No

Poll: What if 10 nearby neighbors come to a variance hearing and they all state concerns with the proposed variance, and that they are against it. Is this sufficient reason to deny the variance?



Yes

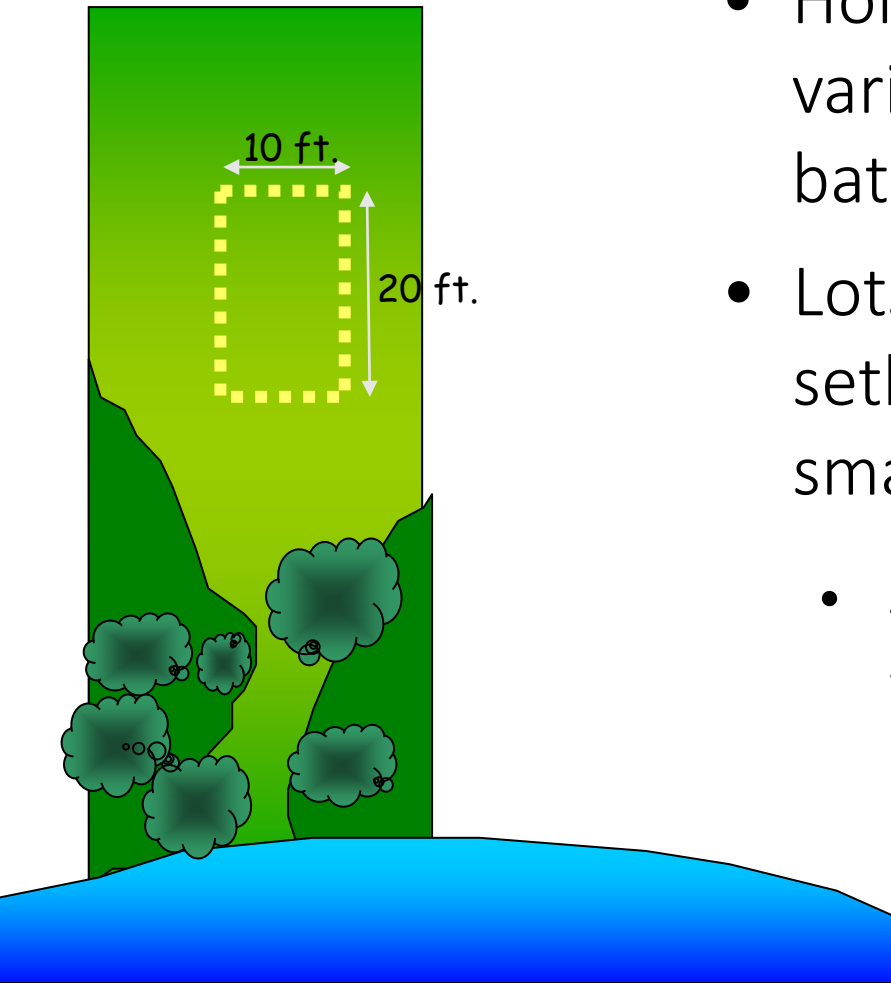


No

What is an unnecessary hardship?

Possibilities:

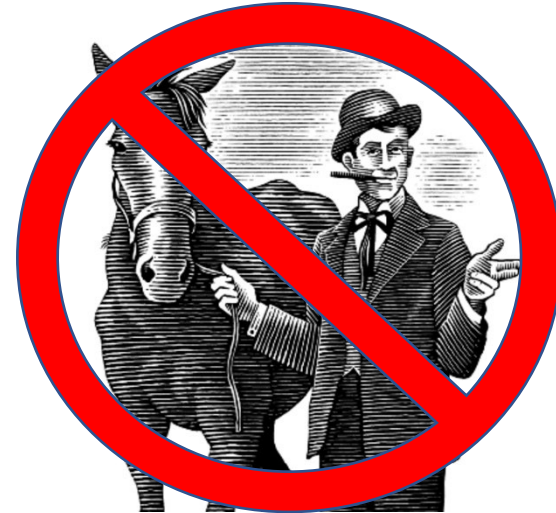
- Homes that would require a variance to have an indoor bathroom
- Lots that are zoned residential but setbacks do not leave room for a small home
 - Stronger case for hardship if a driveway or septic permit was already granted



Variances

A variance can only be granted if the applicant has shown their property meets all three statutory tests:

1. unnecessary hardship
2. due to conditions unique to the property
3. No harm to public interest



Recommendations from towns to the county zoning board should provide reasons the 3 legal tests are or are not met because these are the decision standards the BOA is required to use.



Additional standards that an applicant must meet to grant a floodplain variance:

- Variance shall not cause any increase in the regional flood elevation;
- Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the regional flood elevation; and
- Variances shall only be granted upon a showing of good and sufficient cause,
 - shall be the minimum relief necessary,
 - shall not cause increased risks to public safety or nuisances,
 - shall not increase costs for rescue and relief efforts and
 - shall not be contrary to the purpose of the ordinance.

Decision-Making

- Fact finding
- Credible information
- Goal: Legally defensible decisions

Decision Forms

Order and Determination: The BOA member shall decide / vote on the application and direct the zoning department accordingly. The BOA member must refer to specific evidence when rendering a decision.

The application (does / does not) meet all three of the above tests and therefore the variance should be (granted / denied).

The BOA is only allowed to grant a variance if the applicant provides evidence that they meet all three tests:

- 1) Ordinance standards will result in unnecessary hardship.
- 2) The hardship is due to unique conditions of the property.
- 3) The variance will not harm the public interests.

If the applicant has met all three tests, the BOA may apply conditions to the variance to ensure the public interests are not harmed.

Conditions that apply to this variance:

BOA Member Signature

_____ Date _____

Findings of Fact

I. Findings of Fact

AREA VARIANCE DECISION FORM

Zoning Ordinance Purpose and Intent [Plug in local ordinance purpose.]

The BOA may only grant a variance if the applicant provides evidence that they meet all three legal standards below.

1. **Unnecessary hardship** is present when, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience is not sufficient to meet the unnecessary hardship standard.

The literal enforcement of the ordinance standard(s) (**will / will not**) result in an unnecessary hardship because...

2. **The hardship must be due to conditions unique to the property** such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by

List ordinance purpose

Variance standards listed on decision form.

Zoning board members list facts related to variance standards.

Zoning staff should present their staff report. The report should contain the facts relevant to each variance test. It may contain whether staff feel each legal test is met.

Conclusions of Law

II. Conclusions of Law

AREA VARIANCE DECISION FORM

Zoning Ordinance Purpose and Intent [Plug in local ordinance purpose.]

The BOA may only grant a variance if the applicant provides evidence that they meet all three legal standards below.

1. **Unnecessary hardship** is present when, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience is not sufficient to meet the unnecessary hardship standard.

The literal enforcement of the ordinance standard(s) (**will / will not**) result in an unnecessary hardship because...

2. **The hardship must be due to conditions unique to the property** such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by nearby properties. Further, the entire property must be considered, if a code-compliant location(s) exists, a hardship due to unique property limitations **does not exist**.

Zoning board members analyze and document how the applicant meets or doesn't meet each variance standard

Order and Determination

III. Recommendation or Decision

Order and Determination: The BOA member shall decide / vote on the application and direct the zoning department accordingly. The BOA member must refer to specific evidence when rendering a decision.

The application (does / does not) meet all three of the above tests and therefore the variance should be (granted / denied).

Decision

The BOA is only allowed to grant a variance if the applicant provides evidence that they meet all three tests:

- 1) Ordinance standards will result in unnecessary hardship.
- 2) The hardship is due to unique conditions of the property.
- 3) The variance will not harm the public interests.

If the applicant has met all three tests, the BOA may apply conditions to the variance to ensure the public interests are not harmed.

Conditions that apply to this variance:

If all variance tests are met, decide on conditions

BOA Member Signature _____

Date _____

Credibility of Evidence

- Local government has discretion in terms of how much weight it gives to evidence
- Fact or opinion/speculation
- Source of facts
 - Professional in relevant field
 - Reviewed by professionals
- Documented (photos, study, verified data)

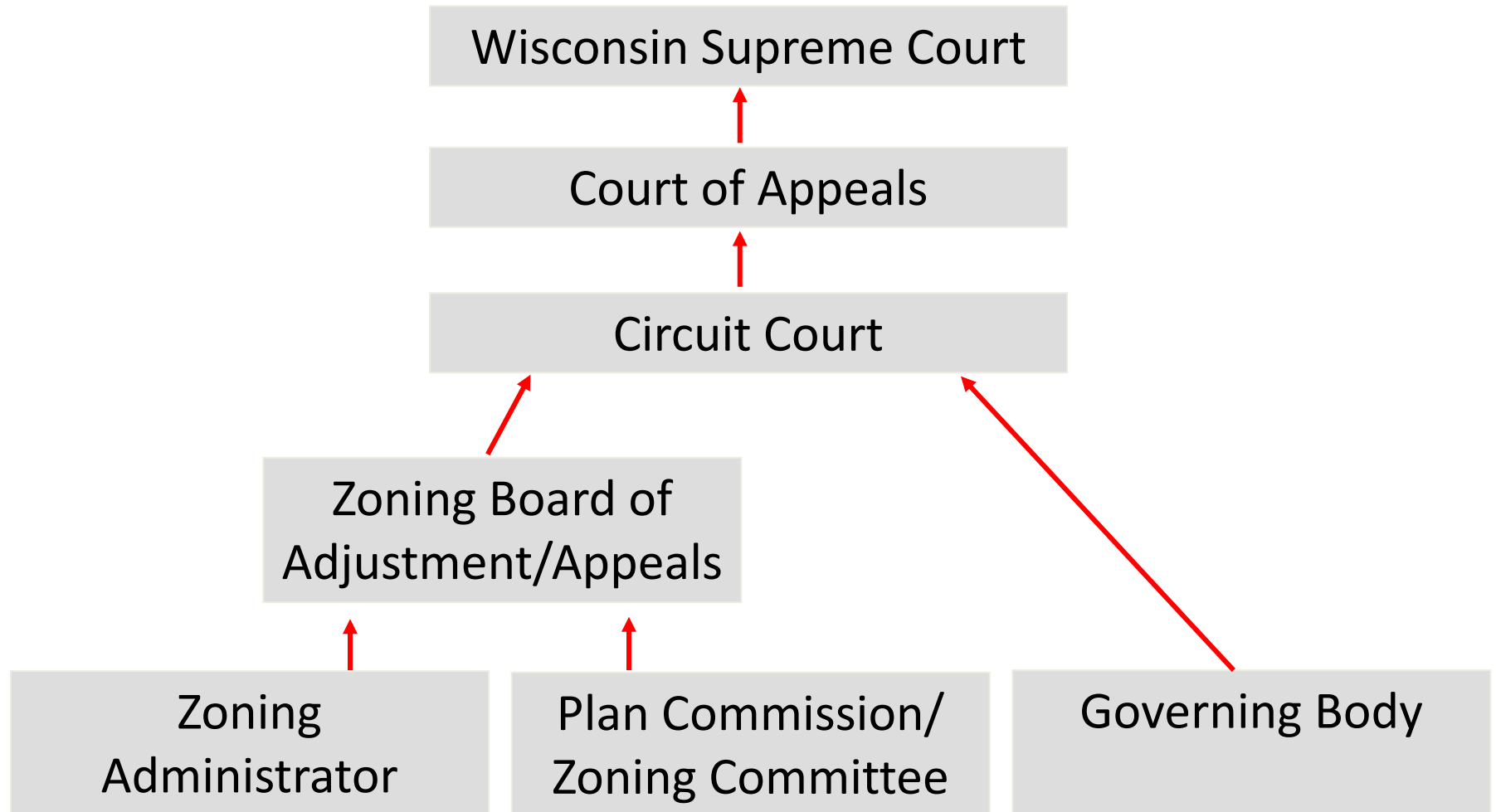
Credibility of Evidence

- The burden of proof is on the applicant seeking a variance, conditional use, or rezone to show that they have met the ordinance standards

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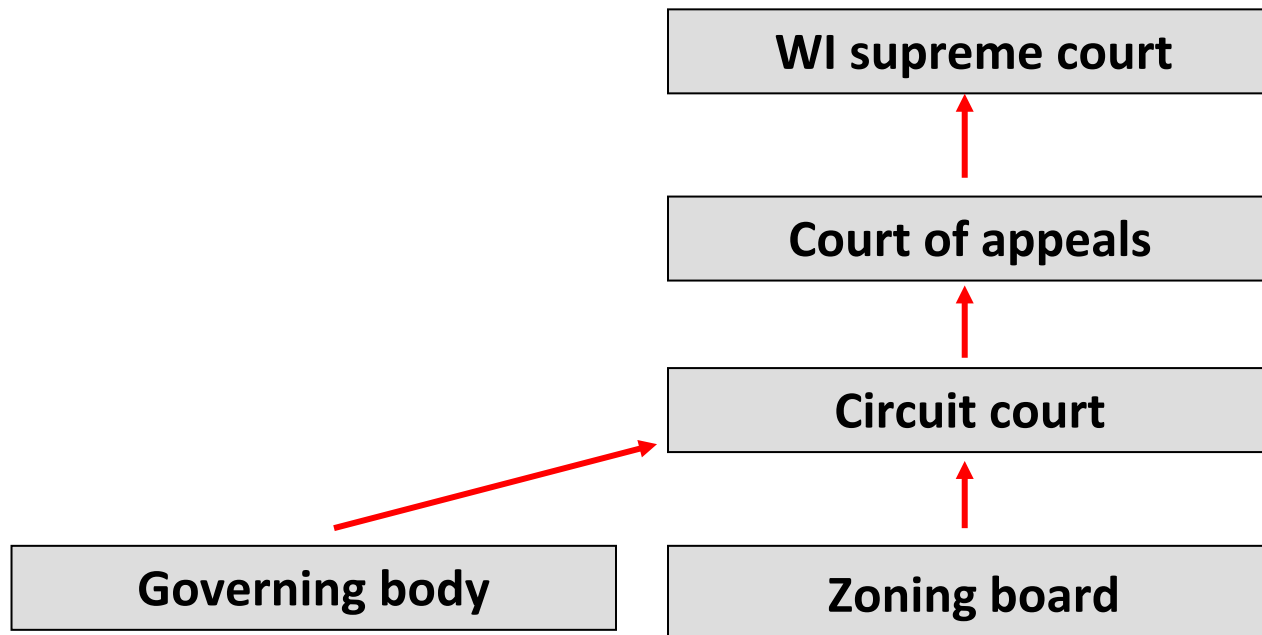
Appeals and Legally Defensible Decisions

Appeal of Zoning Decisions



Appeal of Zoning Board Decisions

- Like court decisions, zoning board decisions can be appealed to higher courts



Legally Defensible Decisions

Courts defer to local decision makers when these tests are met:



Authority

Are you empowered by statute or ordinance to act on the matter?



Proper procedures

Did you follow proper procedures?
(notice, open meeting, public hearing)



Proper standards

Did you apply the proper standards?
(ordinance, state statute, case law)



Rational basis

Were you unbiased? Could a reasonable person reach the same conclusion?



Evidence

Do facts in the record support your decision?

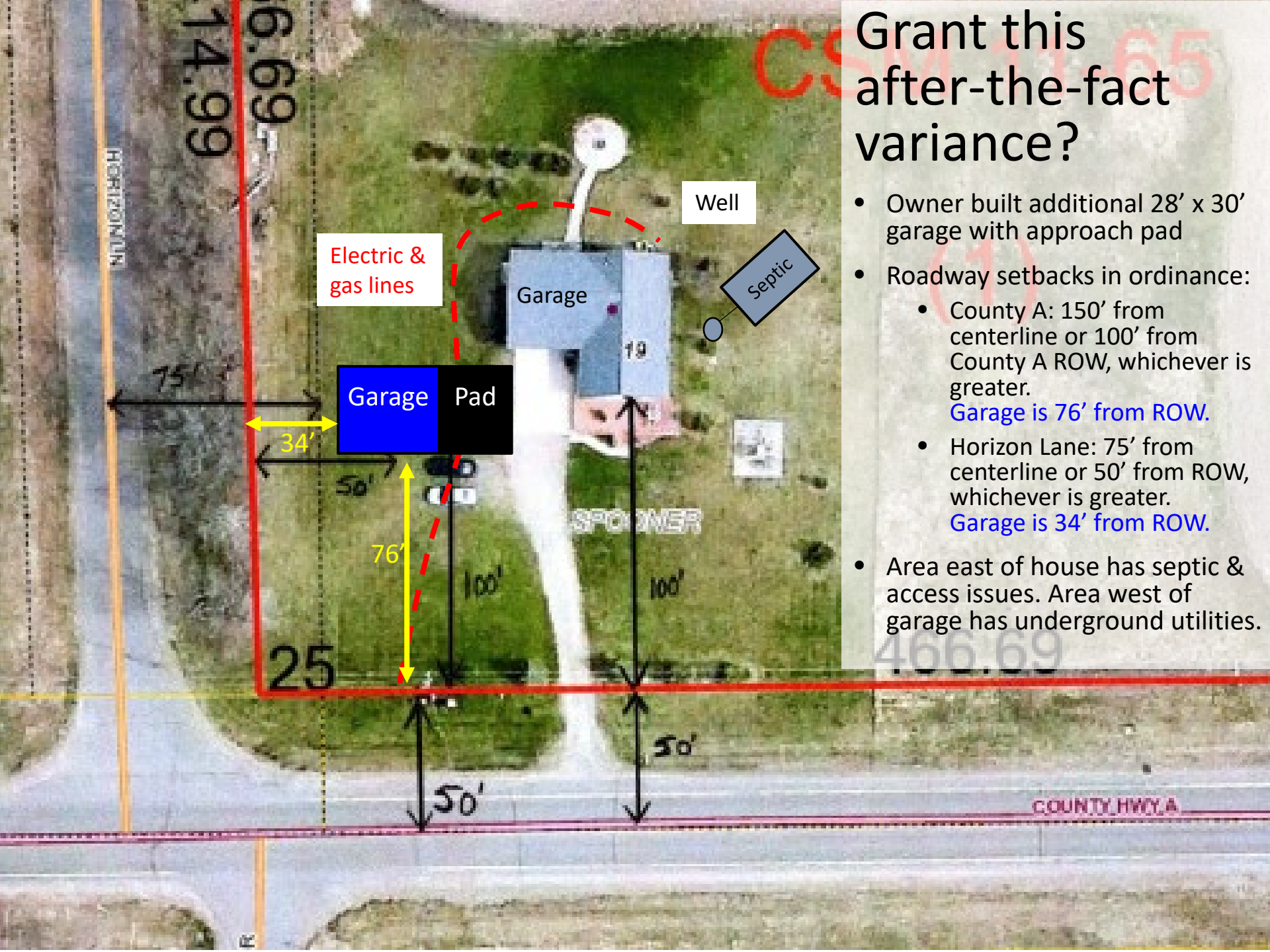
The background features several concentric circles in light gray, some solid and some dashed, creating a ripple effect. A large blue speech bubble is centered on the page, containing two lines of white text. The speech bubble has a tail pointing downwards.

Would you grant this variance?

Has the applicant provided facts showing that they meet all of the variance standards?

Grant this after-the-fact variance?

- Owner built additional 28' x 30' garage with approach pad
- Roadway setbacks in ordinance:
 - County A: 150' from centerline or 100' from County A ROW, whichever is greater.
Garage is 76' from ROW.
 - Horizon Lane: 75' from centerline or 50' from ROW, whichever is greater.
Garage is 34' from ROW.
- Area east of house has septic & access issues. Area west of garage has underground utilities.



Poll: Is the unnecessary hardship test met?



Yes



No



Please type your reasons in chat box

Poll: Is the unique property limitations test met?



Yes



No



Please type your reasons in chat box

Poll: Is the no harm to the public interest test met?

Ordinance purpose and intent.

The purpose is to promote and to protect the welfare of the county. It is intended to encourage development in the county in accordance with their character; to secure safety to health, life and economic suffocation by encroaching uses; to protect the environment for future generations.

A shoreland or floodplain ordinance will have different “public interests” to think about when deciding variances



Yes



No

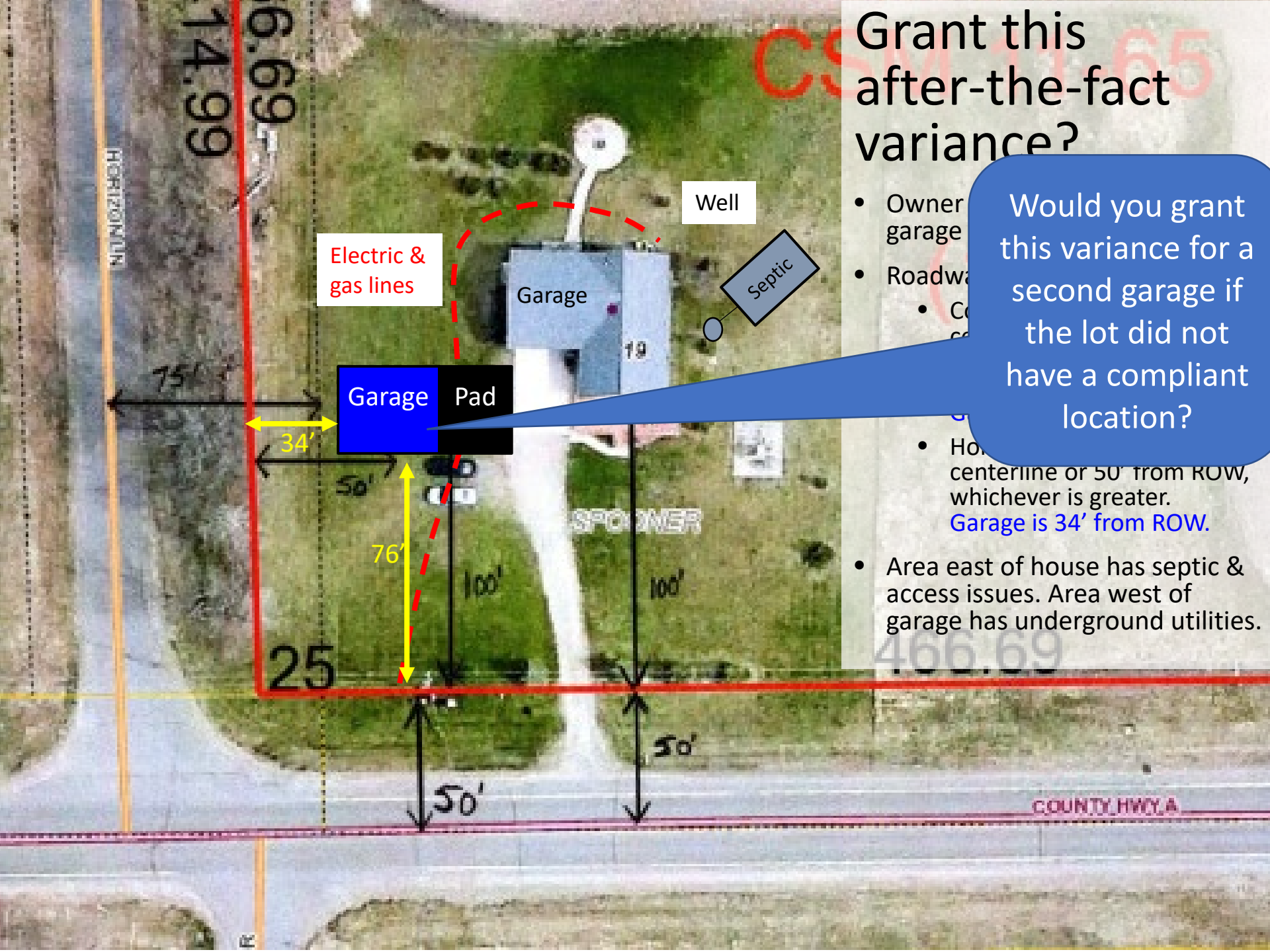
Poll: Are all three variance tests met?



Yes. Grant the variance.



No. Deny the variance.

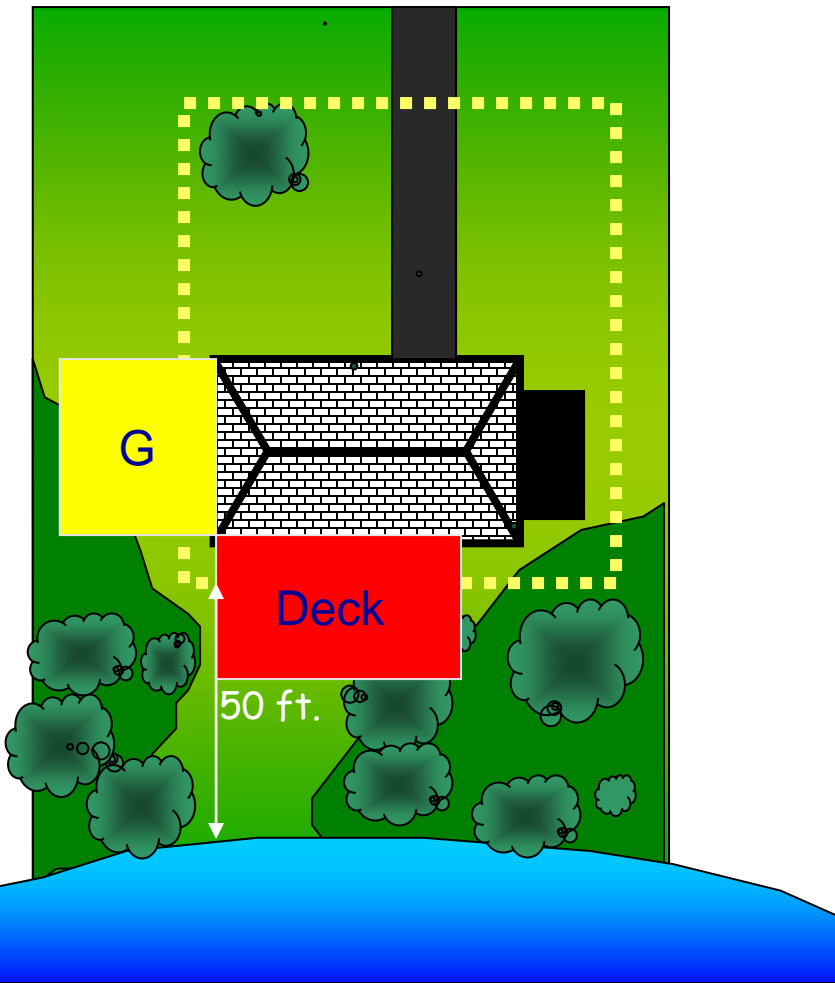


Grant this after-the-fact variance?

Would you grant this variance for a second garage if the lot did not have a compliant location?

- Owner garage
- Roadway
 - Co
 - ce
- Ho
 - centerline or 50' from ROW, whichever is greater.
 - Garage is 34' from ROW.
- Area east of house has septic & access issues. Area west of garage has underground utilities.

Would you grant a variance for the red addition?



- Steep slope under deck
- Other lake properties in this area also have steep slopes
- High value house
- Owners want to enclose the deck closest to water and add on a garage (G)

Poll: Is the unnecessary hardship test met?

For an area variance, unnecessary hardship exists when, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience (or preference) is not sufficient to meet the unnecessary hardship standard.

Yes

No

Your reasons and evidence?

Poll: Is the unique property limitations test met?

The hardship must be due to unique property limitations such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by nearby properties. Further, the entire property must be considered, if a code-compliant location(s) exists, a hardship due to unique property limitations **does not exist**.

Yes

No

Your reasons and evidence?

Poll: Is the no harm to the public interest test met?

Ordinance purpose and intent. Also listed on shoreland variance decision form

For the purpose of promoting and protecting the public health, safety, convenience and general welfare and protecting the public trust in navigable waters, this ordinance has been established to:

(1) Further the maintenance of **safe and healthful conditions and prevent and control water pollution** through:

- a. Limiting structures to those areas where soil and geological conditions will provide a safe foundation;
- b. Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems;
- c. Controlling filling and grading to prevent soil erosion problems, and;
- d. Limiting impervious surfaces to control runoff which carries pollutants.

(2) **Protect spawning grounds, fish and aquatic life** through:

- a. Preserving wetlands and other fish and aquatic habitat;
- b. Regulating pollution sources, and;
- c. Controlling shoreline alterations, dredging and lagooning.

(3) **Control building sites, placement of structures and land uses** through:

- a. Prohibiting certain uses detrimental to the shoreland-wetlands;
- b. Setting minimum lot sizes and widths;
- c. Setting minimum building setbacks from waterways, and;
- d. Setting the maximum height of near shore structures.

(4) **Preserve and restore shoreland vegetation and natural scenic beauty** through:

- a. Restricting the removal of natural shoreland cover;
- b. Preventing shoreline encroachment by structures;
- c. Controlling shoreland excavation and other earth moving activities, and;
- d. Regulating the use and placement of boathouses and other structures.



Poll: Is the no harm to the public interest test met?

A variance may not be granted which results in harm to the **public interests**. The public interests are listed in the purpose section of the ordinance.

Yes

No

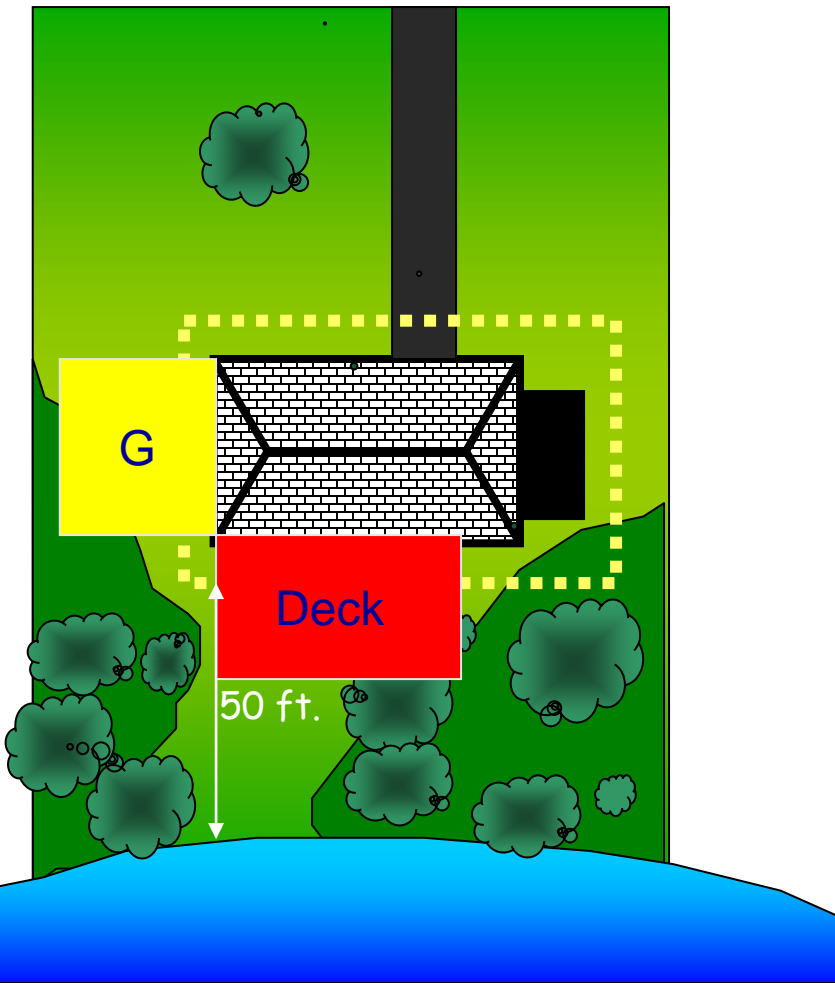
Your reasons and evidence?

Poll: Are all three variance tests met?

Yes. Grant
the variance.

No. Deny
the variance.

Would you grant a variance for the red addition?



- Steep slope under deck
- Other lake properties in this area also have steep slopes
- High value house
- What if there was not a compliant location to build the addition?

Variations

A variance can only be granted if the applicant has shown their property meets all three statutory tests:

1. unnecessary hardship
2. due to conditions unique to the property
3. No harm to public interest



New laws!

Conditional Uses

2023 Wisconsin Act 16

Provides alternatives for appeal of some conditional use decisions.

2023 Wisconsin Act 12, Section 51

Limits regulations and conditions that can be placed on conditional uses or mining licenses for nonmetallic mining.

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Quick Review

Zoning roles



Elected officials adopt the zoning ordinance



BOA members act like judges and apply the ordinance and state laws as written

Key points

- Zoning board members act like judges; they must be neutral and base their decisions on the evidence and the current laws
- Members must be unbiased: If biased or would appear biased, recuse from decision
- The zoning board is only allowed to grant a variance if the applicant provides evidence that they meet all variance tests
- To create a legally defensible decision, zoning board members must explain their reasons why each variance standard is or is not met
- Zoning board decisions can be appealed to the courts
- If the zoning board follows state laws and their local zoning ordinance, their decisions will generally be upheld



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Center for Land Use Education

University of Wisconsin-Stevens Point > CNR Associated Programs > Center for Land Use Education > Role of the Zoning Board of Adjustment/Appeals 071123

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- Student Research



Role of the Zoning Board of Adjustment/Appeals

July 11, 2023 6:00-7:30 PM

This webinar looks at how zoning board members act like judges and how their decisions impact communities. It also takes a deep dive into variance decisions covering the different types of variances, legal standards for granting a variance, and how to create a complete record for the courts.

Webinar Materials

Role of the Zoning Board PowerPoint will be posted here a day before to the webinar

Key Points

[Role of the Zoning Board and Variance Key Points](#)

Zoning Board Process

[Zoning Boards Announcement of Proceedings & Hearings](#)

bit.ly/RZB071123-Resources

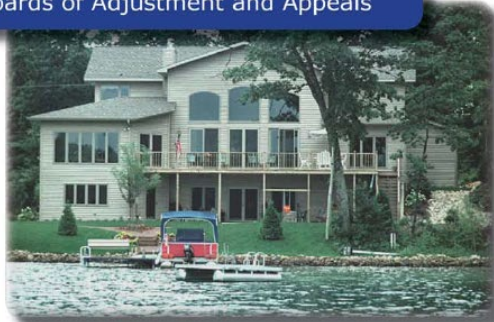


Zoning Board Handbook

For Wisconsin Zoning Boards of Adjustment and Appeals

**2nd Edition
2006**

**Lynn Markham
and Rebecca Roberts
Center for Land Use
Education**



- I. Zoning board basics
- II. Laws that apply
- III. Decision process
- IV. Decisions
- V. Appeal
- VI. Improving decisions
- VII. Shoreland and floodplain zoning

Poll: Do you plan to take any of these actions after attending the webinar? Select all that apply.



Focus more on legal tests in decision-making



Review and update our variance decision forms



Review and update our application materials



Share the webinar resources with my zoning board

Thank you!

Questions??

Lynn Markham
Center for Land Use Education
www.uwsp.edu/cnr-ap/clue
lmarkham@uwsp.edu
715-346-3879



Center for Land Use Education
College of Natural Resources
University of Wisconsin - Stevens Point



Extension
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Demographics

Understanding the demographics of our participant helps us improve Extension programs and services. Asking for the following also helps us meet our institutional requirements for compliance with Federal non-discrimination policies. Providing us with this information is **voluntary**.

If you have questions about this survey or why Extension collects this information, please contact Kim Waldman, Compliance Coordinator & Equity Strategist, UW-Madison Division of Extension, (608) 263-2776, kim.waldman@wisc.edu



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