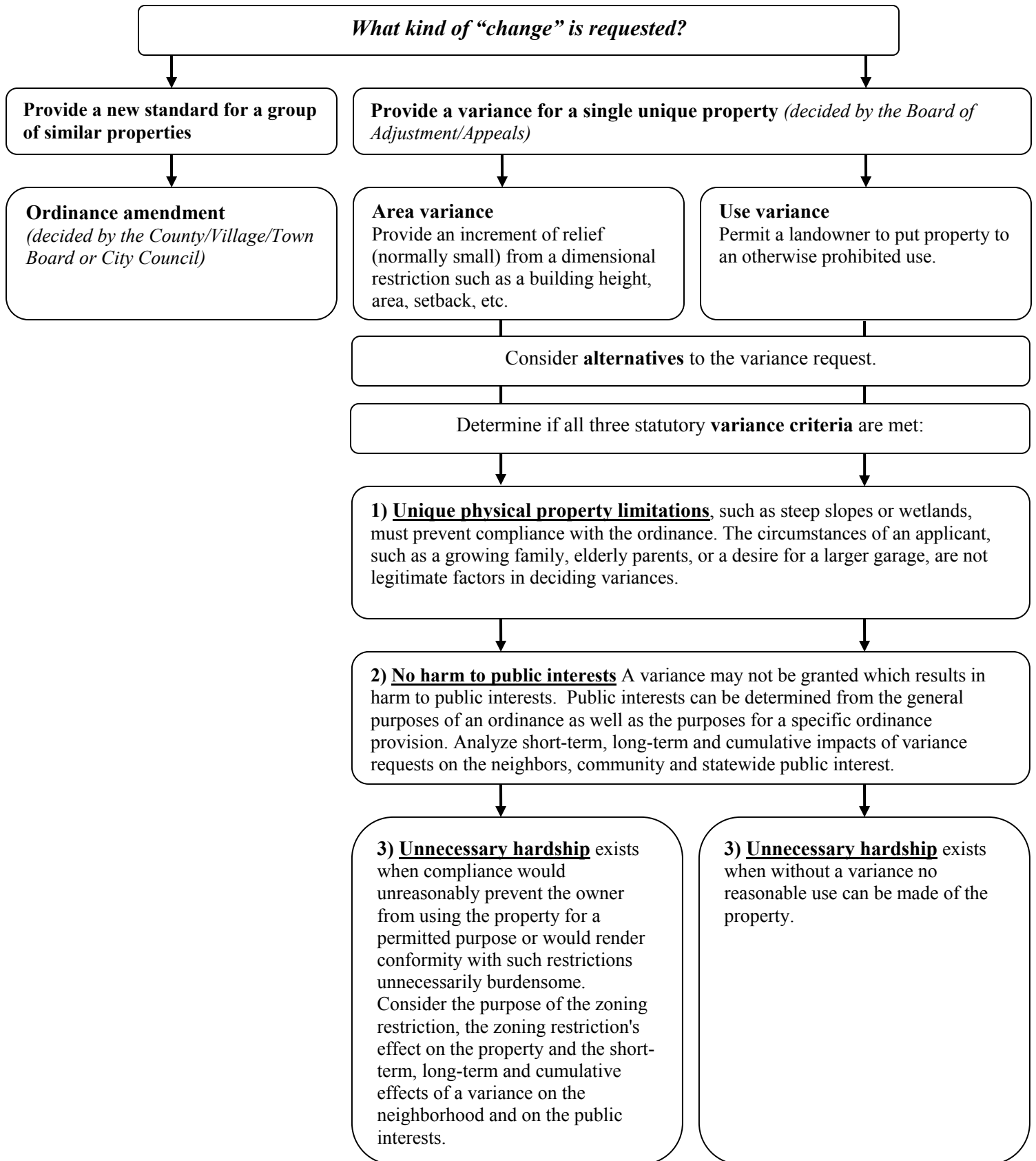


Zoning Variance Request Packet

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Area and use variance decision-making process



Variance Application

Part 1: General information and alternatives analysis.

To be completed jointly by the applicant and zoning staff.

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the zoning board of adjustment/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 \$___ 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 zoning agency 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 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.

_____ BOARD OF ADJUSTMENT/APPEALS

Petition # _____ Date filed _____

\$ _____ fee paid (payable to _____)

	Owner/agent	Contractor
Name		
Address		
Phone		

Legal description: _____ 1/4, _____ 1/4, S _____, T _____ N, R _____ E,

City/Village/Town of _____

Fire number _____

Tax parcel number _____

Lot dimensions & area: _____ x _____ ft. = _____ sq. ft.

Zoning district _____

Current use & improvements:

Description of any prior petition for appeal, variance or conditional use:

Description and location of all nonconforming structures & uses on the property:

Ordinance standard from which variance is being sought (section number and text):

Describe the variance requested:

Describe the effects on the property if the variance is not granted:

Alternatives

Describe alternatives to your proposal such as other locations, designs and constructions techniques. Attach a site map showing alternatives you considered in each category below.

a) Alternatives you considered that comply with existing standards. If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

b) Alternatives you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reasons you rejected them.

Part 2: Three-Step Test

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

1) Unique property limitations *(To be completed by the applicant)*

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. 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. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

Do unique physical characteristics of your property prevent compliance with the ordinance?

- Yes. Where are they located on your property? Please show the boundaries of these features on the site map that you used to describe alternatives you considered.

- No. A variance cannot be granted.

2) No Harm to Public Interests *(To be completed by zoning staff)*

A variance may not be granted which results in harm to public interests. In applying this test, the zoning board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- *Public health, safety and welfare*
- *Water quality*
- *Fish and wildlife habitat*
- *Natural scenic beauty*
- *Minimization of property damages*
- *Provision of efficient public facilities and utilities*
- *Achievement of eventual compliance for nonconforming uses, structures and lots*
- *Any other public interest issues*

Ordinance purpose:

Purpose(s) of standard from which variance is requested:

Analysis of impacts

Discuss impacts that would result if the variance was granted. For each impact, describe potential mitigation measures and the extent to which they reduce project

impact (completely, somewhat, or minor). Mitigation measures must address each impact with reasonable assurance that it will be reduced to an insignificant level in the short term, long term and cumulatively.

Short term impacts (through the completion of construction):

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

Long term impacts (after construction is completed):

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

Cumulative impacts (what would happen if a similar variance request was granted for many properties):

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

- Impact:
Mitigation:
Extent to which mitigation reduces project impact:

Will granting the variance harm the public interest?

- Yes. A variance cannot be granted.

- No. Mitigation measures described above will be implemented to protect the public interest.

3) Unnecessary hardship (To be completed by the applicant)

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- 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.

Note: While Wisconsin Statutes do not specifically prohibit *use variances*, there are a number of practical reasons why they are not advisable:

- Unnecessary hardship must be established in order to qualify for a variance. This means that without the variance, no reasonable use can be made of the property.
- Many applications for use variances are in fact administrative appeals. Often the zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a *use variance* but an appeal of the administrator's interpretation of ordinance text.
- Zoning amendments are a more comprehensive approach than use variances. Elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses or may undermine land use plan and ordinance objectives. Towns have meaningful input (veto power) for zoning amendments to general zoning ordinances.
 - Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
 - Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.

Is unnecessary hardship present?

Yes. Describe:

No. A variance cannot be granted.

Attach construction plans detailing:

- Property lines
- Vegetation removal proposed
- Contour lines (2 ft. interval)
- Ordinary highwater mark
- Floodplain & wetland boundaries
- Dimensions, locations & setbacks of existing & proposed structures
- Utilities, roadways & easements
- Well & sanitary system
- Location & extent of filling/grading
- Location & type of erosion control measures
- Any other construction related to your request
- Anticipated project start date

I certify that the information I have provided in this application is true and accurate.

Signed: (applicant/agent/owner) _____

Date: _____

Remit to: [Zoning office address, phone & e-mail]

Decision Form for the Zoning Board

_____, WISCONSIN

Application/petition # _____

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: _____

Affidavit of publication/posting is on file.

Hearing Date: _____

A. The applicant or appellant is (name and address):

B. The applicant or appellant is the owner/lessee/mortgagee of the following described property which is the subject of the application or appeal:

_____ 1/4 of _____ 1/4, City/Village/Town of _____,

_____ County known as (street address) _____

C. The property is presently in use for _____ and has been so used continuously since _____.

D. The property includes a nonconforming structure/use described as

E. The property has been the subject of a prior appeal/variance/conditional described as

F. The applicant or appellant proposes (brief project description/attach plans):

G. The applicant or appellant requests:

- An appeal of the zoning administrator's determination.
- A conditional use/special exception.
- A use variance.
- An area variance.

...under Section _____ of the ordinance.

The features of the proposed construction and property that relate to the grant or denial of the application or appeal are (refer to the language/standards of the ordinance):

CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

Appeal/Interpretation – The order of the zoning administrator (is/is not) in excess of his/her authority because

(or) The zoning administrator’s interpretation of Section _____ of the zoning code (is/is not) a correct interpretation because

Variance – The variance (does/does not) meet all three of the following tests:

A. The hardship (is/is not) due to physical limitations of the property rather than the circumstances of the appellant because

B. The variance (will/will not) harm the public interest because

C. Unnecessary hardship

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.

Unnecessary hardship (is/is not) present because

Conditional Use – The application for a conditional use permit (does/does not) qualify under the criteria of Section _____ of the ordinance because

ORDER AND DETERMINATION

On the basis of the above findings of fact, conclusions of law and the record in this matter the board orders:

Appeal/Interpretation – The zoning administrator’s order/interpretation of the zoning code or map is (affirmed/modified/reversed) and the administrator is ordered to:

Variance/Conditional Use – The requested (variance/conditional use) is (denied/granted/granted-in-part) subject to the following conditions/mitigation:

1. _____
2. _____
3. _____
4. _____
5. _____

The zoning administrator is directed to issue a zoning permit incorporating these conditions and certifying by the petitioner/applicant’s signature that he/she understands and accepts the conditions.

Expiration of permit. Any privilege granted by this decision must be exercised within _____ months of the date of this decision after 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.

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

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

_____ Zoning Board of Adjustment/Appeals

Signed _____ Attest _____
Chairperson Secretary

Dated: _____

Filed: _____