

BOARD OF ADJUSTMENT/APPEALS

VARIANCE DECISION FORM – SHORELAND ZONING

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

1. Unnecessary hardship (check area variance or use variance)

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 is not sufficient to meet the unnecessary hardship standard. (*Snyder v. Waukesha County Zoning Bd. Of Adjustment*, 1976).

Use variances are not allowed in shoreland zoning. (NR 115.05(4)(e))

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

2. 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**.

The hardship (**is / is not**) due to unique conditions of the property because...

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

Purpose and intent:

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;
 4. 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.

The variance (**will / will not**) harm the public interests because...

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 _____

Guiding Principles to Grant a Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

Parcel-as-a-whole. The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County*, 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

Self-imposed hardship. An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

Circumstances of applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

Financial hardship. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

Uniqueness of the property. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the BOA may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption. *Arndorfer v. Sauk County Bd. Of Adjustment*, 162 Wis. 2d 246, 469 N.W.2d 831 (1991).

Nearby violations. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

Objections from neighbors. The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

Variance to meet code. Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)