

TOWN OF GRAND RAPIDS
ZONING APPEAL/VARIANCE APPLICATION

Petition # _____

Parcel # _____

Owner / Agent

Contractor

| Name | Owner / Agent | Contractor |
|---------|---------------|------------|
| Address | | |
| Phone | | |

LOCATION (Address) _____

Legal Description _____

Zoning District _____

Parcel size & dimensions _____ sq. ft. _____ X _____

Current use & improvements: _____

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

Description and location of all non-conforming structures and uses on the property: _____

Ordinance section from which the variance is being sought (section # and text): _____

Describe the variance being requested: _____

Type of variance being requested:

_____ Use variance- permits a landowner to put a property to an otherwise prohibited use.

_____ area variance- provides an increment of relief (normally small) from a physical dimensional restriction such as building height or setback

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

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Reasons why variance is requested:

Alternatives

Describe alternatives to your proposal such as other locations, designs and construction 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 that you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reason you rejected them.

Applicant must provide all pertinent information, as well as any surveys, plot plan, photos, building sketches, easements, street locations, parking, loading or driveways, access restrictions, setbacks, adjacent properties, structures and uses, fencing/screening, type construction, construction commencement/completion dates, septic systems, well, drainage, hours of operation, traffic generation, and any other information needed by the Board to act upon the request. Application must be present at the Zoning Appeals Board hearing at which the permit is considered.

NOTE: If not begun in (6) six months, variance becomes void.

Principles guiding Zoning Appeals Board decisions:

1. The burden is upon the appellant to prove the need for a variance.
2. Pecuniary hardship, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales, are not sufficient reasons for granting a variance.
3. The Board is bound to accept the Zoning Ordinance and map as being correct.
4. The plight of the appellant must be unique, as a shallow or steep parcel of land, or situation caused by other than his own action.
5. The hardship justifying a variance must apply to appellant's parcel or structure and not generally to other properties in the same district.
6. The variance must not be detrimental to adjacent properties.
7. The Zoning Appeals Board in fulfilling its duties may modify, alter or change any application.

Before signing, please read the attached "What are the criteria for granting a variance?"

Applicant _____ **Owner*** _____
(Signature) (Signature) *If Applicant is not the Owner

Date _____ \$200.00 Public Hearing paid on _____

Zoning Appeals Board Hearing on _____ () Grant () Deny
Other _____

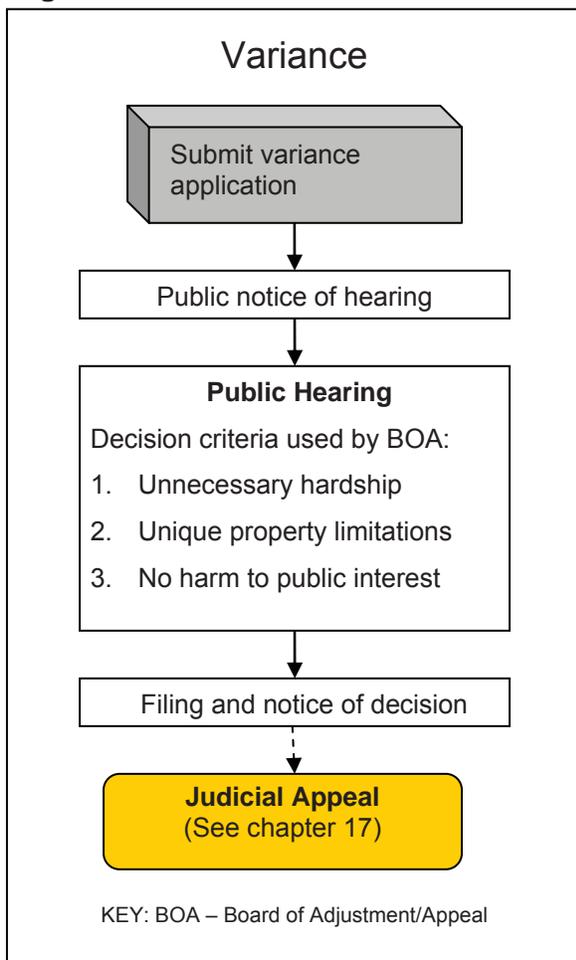
Building Inspector/Zoning Administrator
2410 48th Street South • Wisconsin Rapids, WI 54494-7799
Phone (715) 424-1821 • Fax (715) 424-0688
Email: building@grandrapidswi.org

What are the criteria for granting a variance?

To qualify for a variance, an applicant has the burden of proof to demonstrate that all three criteria defined in state statutes and outlined below are met.¹⁴⁴

- Unnecessary hardship
- Unique property limitations
- No harm to public interests

Figure 24: Variance Process



Local ordinances and case law may also specify additional requirements. The zoning department can assist a petitioner in identifying how these criteria are met by providing clear application materials that describe the process for requesting a variance and the standards for approval (see the sample application form in Appendix D).

1. Unnecessary Hardship

The Wisconsin Supreme Court distinguishes between area and use variances when applying the unnecessary hardship test:

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.¹⁴⁵ What constitutes *reasonable use* of a property is a pivotal 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 may not be granted. 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 and no more. A proposed use may be reasonable when it:

¹⁴⁴ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d at 420, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d at 254, 469 N.W.2d 831 (1991).

¹⁴⁵ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 413-414, 577 N.W.2d 813 (1998).

- does not conflict with uses on adjacent properties or in the neighborhood,
- does not alter the basic nature of the site (e.g., conversion of wetland to upland),
- does not result in harm to public interests, and
- does not require multiple or extreme variances.

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.”¹⁴⁶ To determine whether this standard is met, zoning boards should consider the purpose of the zoning ordinance in question (see the appendix for information about the purposes of shoreland and floodplain zoning), its effects on the property, and the short-term, long-term, and cumulative effects of granting the variance.¹⁴⁷

Courts state that “unnecessarily burdensome” may be interpreted in different ways depending on the purposes of the zoning law from which the variance is being sought. For example, the purpose of a shoreland district to *protect water quality, fish, and wildlife habitat and natural scenic beauty for all navigable waters in Wisconsin* would be interpreted differently from the purpose of a residential district to *protect the character of established residential neighborhoods*. In light of increased focus on the purposes of a zoning restriction, zoning staff and zoning boards have a greater responsibility to explain and clarify the purposes behind dimensional zoning requirements.

2. Hardship Due to Unique Property Limitations

Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance.¹⁴⁸ The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances.¹⁴⁹ Property limitations that prevent ordinance compliance and are common to a number of properties

¹⁴⁶ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d at 475, 247 N.W.2d 98 (1976) (quoting 2 Rathkopf, *The Law of Zoning & Planning*, § 45-28, 3d ed. 1972).

¹⁴⁷ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁴⁸ *State ex rel. Spinner v. Kenosha County Bd. of Adjustment*, 223 Wis. 2d 99, 105-6, 588 N.W.2d 662 (Ct. App. 1998); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 410, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 255-56, 469 N.W.2d 831 (1991); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478, 247 N.W.2d 98 (1976)

¹⁴⁹ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98

should be addressed by amending the ordinance.¹⁵⁰ For example, an ordinance may, in some cases, be amended to provide reduced setbacks for a subdivision that predates the current ordinance and where lots are not deep enough to accommodate current standards.

3. No Harm to Public Interests

A variance may not be granted which results in harm to public interests.¹⁵¹ In applying this test, the zoning board should review the purpose statement of the ordinance and related statutes in order to identify public interests. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Promoting and maintaining public health, safety, and welfare
- Protecting water quality
- Protecting fish and wildlife habitat
- Maintaining natural scenic beauty
- Minimizing property damages
- Ensuring efficient public facilities and utilities
- Requiring eventual compliance for nonconforming uses, structures, and lots
- Any other public interest issues

In light of public interests, zoning boards must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state.¹⁵² Review should focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

The flow chart in Figure 25 summarizes the standards for area variances and use variances. Application forms and decision forms reflecting these standards are included in *Appendix D*.

¹⁵⁰ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 256, 469 N.W.2d 831 (1991); *State v. Winnebago County*, 196 Wis. 2d 836, 846, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵¹ *State v. Winnebago County*, 196 Wis. 2d 836, 846-47, 540 N.W.2d 6 (Ct. App. 1995); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 407-8, 577 N.W.2d 813 (1998)

¹⁵² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

Figure 25: Area and Use Variance Decision Process

