



# Dane County Planning & Development

Division of Zoning

## **GUIDELINES FOR VARIANCE APPLICATIONS** **DANE COUNTY BOARD OF ADJUSTMENT**

### **Introduction**

The County Zoning Ordinance is adopted and enacted by the Dane County Board of Supervisors. The Dane County Board of Adjustment is the body that reviews and makes decisions on requests for variances from the County Zoning Code. The Board of Adjustment is comprised of five citizen members. The Board of Adjustment's general grant of authority is found in Section 59.694, Wis. Statutes, as follows:

"The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained."

A zoning ordinance cannot anticipate every land use question that will arise in a community. The Board of Adjustment's authority to grant a variance gives the ordinance limited flexibility. The Board of Adjustment acts as a quasi-judicial administrative arm of the County Board. It is the Board of Adjustment's duty to preserve the zoning ordinance without modification as far as possible while ensuring substantial justice for the individual. The variance procedure allows the general rules to be varied in response to unusual circumstances, which constitute a legal hardship.

**The Board of Adjustment uses a "three-step" test to determine if an appeal warrants the granting of a variance. A description of the three-step test for variance appeal hardships can be found below.**

### **Additional Information Regarding Standards Followed by the Dane County Board of Adjustment in Considering Variance Applications**

1. It is the responsibility of the applicant who is seeking the variance to provide "proof" that strict enforcement of zoning regulations will result in a legal hardship. A variance cannot be granted as a convenience to the property owner.
2. The legal hardship must come from the zoning regulations. A self-imposed hardship cannot serve as justification for a variance; i.e., the problem was self-created by the action or negligence of the applicant; the applicant commenced work on a project without first obtaining required permits or had failed to inform him/herself on permit requirements, etc.
3. The legal hardship or difficulty stated as the reason why a variance is necessary must be particular to the zoning parcel in question and different from that of other area parcels. The applicant for a variance must clearly show the Board that the request is due to the very unusual qualities of the property.
4. The expenditure of money does not constitute a legal hardship. In other words, the courts do not recognize financial hardship as a basis upon which a Board of Adjustment can give a variance (i.e., the fact that a structure erected in violation of the Zoning Code would be expensive to move, that an alternative location which would be in compliance with zoning regulations might be somewhat more expensive on which to build, etc.). The courts have uniformly held that, when a hardship was created by the applicant's own acts, they are not entitled to relief.

## Dane County Zoning -- Variance Application Guidelines, Page 2 of 2

5. Zoning violations by others in the area, nonconformity of structures on other properties or other variances given in the area do not automatically entitle an applicant to the approval of his or her variance request. What constitutes a legal hardship and substantial justice is a matter to be determined by the Board from the facts and circumstances of each individual appeal.
6. In granting variances, the Board of Adjustment may impose special conditions to ensure that the public welfare will not be damaged.
7. Under certain fact circumstances, a variance may be approved on the basis that it is necessary in order to secure the applicant the right of rights that are enjoyed by other property owners in the same area.
8. A variance will not be granted simply because there is no objection to it or because those who do not object outnumber those who do.

### **VARIANCE APPLICATION INSTRUCTIONS**

#### **THE FOLLOWING INFORMATION MUST BE SUBMITTED BEFORE ANY VARIANCE APPLICATION WILL BE ACCEPTED:**

- A. A written statement which includes:
    1. Name and address of applicant (and agent, if any).
    2. Address, location, tax parcel number, and legal description of the property.
    3. Detailed description of the proposed project (new building, alteration or addition to existing building, etc.)
  - B. Completed "Variance Application" form describing alternatives and listing hardships. Your appeal must meet all three of the "steps" to be approved. SEE 3-Step Test BELOW.
  - C. Site plan: A detailed site plan, prepared by a Registered Land Surveyor, is required in most cases. It must be accurate, drawn to an easily measurable scale, and must show all lot lines and dimensions, locations and dimensions of all existing and proposed structures (including any additions and alterations) and their setbacks from lot lines. The site plan must include the location of any septic system, well, driveway, accessory building and other physical features of the property. Other information may be required, such as topographic data, calculation of percentages of lot coverage, etc.
  - D. Floor plans and elevations of the existing and/or proposed structure(s) -- may be preliminary.
  - E. **A letter from the Town Clerk or Administrator, acknowledging that the applicant or agent has informed the Town of their intent to apply for a Variance. (Required by Dane County Board of Adjustment directive of 09/28/1997: Staff may not accept a Variance Appeal application without a letter from the Town. Explanation: Board action on an Appeal may be delayed if the Town has not had an opportunity for input.)**
- **A pre-application meeting with the Assistant Zoning Administrator is strongly encouraged prior to applying for a variance.**
  - **Public hearings are scheduled once per month. An annual schedule of the Board of Adjustment, including deadline dates for applications, is available on the County website.**
  - **VARIANCE APPLICATION FEE IS \$500.00, payable to Dane County Zoning.**

**NOTE: If Appeal is granted, a Zoning Permit must be obtained within one year, or variance(s) will expire.**  
**Dane County Ordinance 10.26(9)**



# Dane County Planning & Development

## Division of Zoning

### Three-Step Test to Qualify for a Variance:

*The Dane County Board of Adjustment uses the following "Three Step Test" as standards by which it judges the "legal hardship(s)" presented by the applicant when considering variance appeals. The Board includes Findings of Fact and Conclusions at Law when it takes action on an appeal, using specific language from **each** of the three requirements.*

To qualify for a variance, your property must meet the following requirements:

#### **1. Unnecessary Hardship**

Strict application of an ordinance requirement (dimensional standard) must result in unnecessary hardship. Wisconsin case law describes hardship as being present where, in the absence of a variance, no reasonable use can be made of the property. In some more extreme cases, open space uses may be the only reasonable use of a property, while in others a scaled down home and some relaxation of a setback requirement may provide a reasonable use. The zoning board will balance public interests in preserving the objectives of the ordinance and private interests in a property in determining which uses are reasonable. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then this test is not met and a variance cannot be granted. An applicant may not claim 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 determined that loss of profit or financial hardship do not, by themselves, justify a variance. Decks and similar minor accessory structures are not essential to the reasonable use of property and are not eligible for variances.

#### **2. Hardship Due to Unique Physical Limitations of the Property**

Hardship must be due to unique physical limitations of the property, i.e. compliance with ordinance requirements is prevented by limitations (steep slopes, wetlands, etc.) that are not generally shared by other properties. The circumstances of an applicant (growing family, need for 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. Minor property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amendment of the ordinance.

#### **3. No Harm to Public Interests**

A variance may not be granted which results in harm to public interests. In applying this test, the board must consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community. These interests are listed as objectives in the purpose statement of an ordinance and may include general public health, safety and welfare as well as more specific issues such as environmental protection, clean drinking water and other concerns.

In addition to passing the 3-step test, you must also demonstrate that no other alternatives that would not require relief from zoning regulations exist. An existing alternative demonstrates that relief is not warranted.

Source: Zoning Board Handbook for Zoning Boards of Adjustment/Appeals by Michael D. Dresen and Lynn Markham, published July 2001 by the Land Use Education Center, The College of Natural Resources and cooperative Education, University of Wisconsin – Stevens Point, pp.42-43



# Dane County Planning & Development

## Division of Zoning

Appeal No. \_\_\_\_\_  
 Date Received \_\_\_\_\_  
 Date of Public Hearing \_\_\_\_\_

### VARIANCE APPLICATION:

**Owner:** \_\_\_\_\_ MOHAMMAD A CHOWDRY \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_ 2842 S 49TH ST \_\_\_\_\_  
 \_\_\_\_\_ MILWAUKEE WI 53219 \_\_\_\_\_  
**Phone Number(s):** \_\_\_\_\_  
**Email Address:** \_\_\_\_\_

**Assigned Agent:** \_\_\_\_\_ Seth E. Dizard, Esq., Court-appointed Receiver \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_ 111 E. Wisconsin Avenue, Suite 1400 \_\_\_\_\_  
 \_\_\_\_\_ Milwaukee, WI 53202 \_\_\_\_\_  
**Phone Number(s):** \_\_\_\_\_ 414-276-5000 \_\_\_\_\_  
**Email Address:** \_\_\_\_\_ seth.dizard@wilaw.com \_\_\_\_\_

*To the Dane County Board of Adjustment:*  
 Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.

Parcel Number: 0 8 1 0 - 0 8 1 - 8 3 4 1 - Zoning District: G2 Acreage: 2.353  
 Town: Burke Section: 8 1 / 4 N E 1 / 4 N E  
 Property Address: 6011 US Highway 51  
 CSM: \_\_\_\_\_ Lot: \_\_\_\_\_ / Subdivision: \_\_\_\_\_ Block/Lot(s): \_\_\_\_\_  
 Shoreland: Y / N / Floodplain: Y / N / Wetland: Y / N / Water Body \_\_\_\_\_  
 Sanitary Service: Public / Private (Septic System)

Current Use: Abandoned Gas Station

Proposal: Truck Wash

**NOTE:** You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

**REQUIRED BY ORDINANCE**

Section	Description	Required	Proposed or Actual	Variance Needed

**PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:**

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, 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. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) 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.

The site is currently developed within the wetland setback and was used as a gas station that is no longer in business.  
The property can not be redeveloped and adhere to the 75' wetland setback.

\_\_\_\_\_  
\_\_\_\_\_

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

There are no alternatives that allow the property to be developed unless the setback is reduced.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

*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.*

*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 or claiming that they need more outbuilding space than that permitted to store personal belongings). 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.*

The property is zoned as Commercial and the taxes are based on that zoning. The property is no longer viable as a commercial property if the wetland setbacks are not reduced making the value of the property significantly less.

\_\_\_\_\_  
\_\_\_\_\_

(3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. The required Site Plan and/or Survey submitted with your application must show these features.

*Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the 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.*

Please refer to the Existing Conditions Plan and Site Plan to see how the wetland setback restricts the property.

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(4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.

*These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.*

The site currently is a vacant gas station. The proposed redevelopment would include stormwater management and an enhanced 75' buffer. The enhanced buffer would provide better habitat and water quality compared to the existing conditions.

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## **REQUIRED PLANS AND SPECIFICATIONS:**

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. In most cases, a survey by a Registered Land Surveyor is needed. The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
  - Scale and North arrow
  - Road names and right-of-way widths
  - All lot dimensions
  - Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
  - Proposed new construction, additions or structural alterations.
  - For property near lakes, rivers or streams:
    - Location of Ordinary High Water Mark (OHWM) Elevation
    - Location of Floodplain Elevation
  - For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
  - Topographic survey information may be desirable or necessary.
  - Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
  - For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

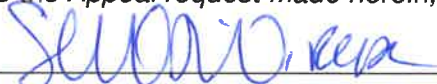
**2. Floor Plans and Elevations:** Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

**3. Town Acknowledgment:** Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

**APPLICANT SIGNATURE:**

*The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.*

Signature Required:  Date: 6/3/2002

Print Name: Seth E. Dizard, Court-appointed Receiver

Specify Owner or Agent: Agent / Court-appointed Receiver of Owner's real estate

**Agent must provide written permission from the property owner**

**STAFF INFORMATION:**

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

Site Plan

Floor Plans

Elevations

Fee \_\_\_\_\_ Receipt No. \_\_\_\_\_

Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. \_\_\_\_\_

**Approved by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Director, Division of Planning Operations, Department of Planning and Development**