

# Zoning Variance – Information

A variance is a relaxation of a dimensional standard in a zoning ordinance (e.g., setbacks, lot area, height, etc.). Variances are decided by a zoning board of adjustment/appeals that must follow rules of due process and functions almost like a court. The board's duty is not to compromise ordinance requirements for a property owner's convenience, but to apply legal standards for granting of a variance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden on use of property. It is not appropriate to contact individual board members regarding a pending decision. You will be asked to provide written materials and testimony at the public hearing in support of your petition for a variance.

## Process.

At the time of application, you will be asked to:

1. **Complete an application form** and submit a fee (\$100 for residential applications; \$200.00 for commercial applications. Note: Fees are non refundable after publication.
2. **Provide detailed plans** describing your lot and project (location, dimensions, materials, limiting site conditions, etc.);
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 lot lines**, the proposed building footprint and 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 official newspaper describing your project and 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. You must provide information to show that you qualify for a variance. At the hearing, you and other interested parties may appear in person or may be represented by an agent or attorney. If you or your agent does not appear at the public hearing, the board must deny your request for a variance.

## Three-Step Test

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 not 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, irregular shaped lots, etc.) that are not generally shared by other properties. 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. 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.

### **If Your Property Qualifies For a Variance**

- Minimum variance. The board may grant only the minimum variance that preserves a reasonable use of the parcel for its owner.
- Conditions on development. It may impose limitations on project design, construction activities or operation of a facility as mitigating measures to assure that public interests and neighboring properties are protected.
- Appeals. A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing the decision in the office of the board. Consider delaying construction until the appeal period has expired to minimize the risk that the court may overturn the board decision and void your variance.
- Expiration of permit. A variance approved by the Board of Appeals shall expire six (6) months after the approval date if work has not been started on the approved variance.
- Transfer of rights. Because a property (rather than its owner) may qualify for a variance, a variance transfers with the property to subsequent owners.

### **Judicial Review**

Courts review zoning board decisions. Consider these standards for your review to determine whether a decision of interest to you is likely to be reversed on appeal.

If you have additional questions or comments, do not hesitate to contact:

Village of Bellevue – Zoning Administrator  
2828 Allouez Ave.  
Green Bay, WI 54311  
(920) 468-5225

## **Zoning Board of Appeals Meetings Rules of Conduct**

These are simple rules and guidelines that will make you feel more comfortable as you present your petition for variance or appeal.

When the hearing starts please step forward to the table and give your name and address for the records. Each member has a copy of your petition. Please address the Chair if you have any questions to ask of Board members or anyone else. You have the right to be represented by an attorney.

Members of this Board are citizens who contribute their time and efforts to hear your request. We will not tolerate loud and abusive language. This meeting will be run in an orderly manner. The Chairperson asks that you be courteous and tolerant when you are questioned by Board members

For variances, bear in mind that if the literal enforcement of the ordinance does not result in a practical difficulty or an unnecessary hardship, your request for a variance may be denied. Self imposed hardships, loss of profit, or monetary hardships, and violations by neighboring owners do not justify granting a variance. A variance will be denied if the proposed variation will be detrimental to public welfare, injurious to other properties in the neighborhood, or substantially increase the congestion of public streets.

In the case of an appeal, the Board is empowered only to decide whether the Zoning Administrator's interpretation of the Zoning Ordinance is correct. It is the Board of Appeal's duty to uphold the Village's Ordinances, not to create new rules to accommodate your request.

The Board of Appeals consists of five (5) members plus two (2) alternates. They are governed by the Village of Bellevue Zoning Ordinance and the Wisconsin State Statutes. A concurring vote of four members is required to grant a variance or appeal.