

# WALWORTH COUNTY ZONING VARIANCE APPLICATION FORM AND NOTICE OF REQUIREMENTS

## Variance

A variance is a relaxation of dimensional standards in land use regulations (e.g., setbacks, lot area, height, etc.) Variances are decided by the 3-member Board of Adjustment which is appointed by the Walworth County Board Chair with approval of the Walworth County Board of Supervisors.

The Board of Adjustment is known as a quasi-judicial body because it functions like a court. The Board's decisions must comply with specific criteria provided in state laws. The Board of Adjustment must apply Walworth County ordinance provisions as they are written.

The Board's job is not to compromise for a property owner's convenience, but to apply appropriate legal standards to a specific fact situation. **Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.**



## Process

Prior to applying to the Board of Adjustment for a variance you will need to have been denied a zoning permit application. The following are required to be submitted with the variance application:

1) **Complete an application form and submit a \$450 fee** (made payable to Walworth County); including a written statement showing that your project meets the legal criteria for a variance as outlined on the next page (Three Step Test);

**-Filing fee is not refundable**

2) **Provide a plat of survey.** The plat must show the location of the buildings on the lot, proposed buildings, addition, etc. and the distances to the lot lines, body of water and roads;

3) **Provide a detailed map and directions** to your property from Elkhorn;

4) **Stake lot lines**, proposed building footprint and all other features of your property related to your request so that the Board may inspect the site;

5) **Provide detailed construction plans, photos and any applicable letters of support;**

6) **Present the proposal to the Clerk of your Town Board** to receive a recommendation prior to appearing before the Board of Adjustment. Some Towns will recommend denial if they have not been notified.

Following the above steps, the Land Use and Resource Management Department 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. The Land Use and Resource Management Department will also notify abutting property owners. The hearing date is set by the Board of Adjustment. Hearings will be on the second Wednesday of the month at 9:00 a.m. DUE TO LEGAL PUBLICATION REQUIREMENTS THESE HEARINGS ARE SUBJECT TO FILING DEADLINE DATES. THEREFORE, IT IS IMPORTANT THAT YOU CHECK WITH THE ZONING DIVISION OF THE LAND MANAGEMENT DEPARTMENT FOR THE DEADLINE DATES. The Board of Adjustment agenda is limited to 12 hearings from April through October. The Board of Adjustment agenda is limited to 6 hearings from November through March. Upon reaching the designated limit, completed applications submitted shall be scheduled for the next available agenda. Hearings postponed or tabled by the Board of Adjustment will be scheduled at the end of the next month's agenda.

The burden will be on you, as the property owner, to provide verifiable facts upon which the Board may base its decision. It is necessary for the applicant or a representative to be present at the hearing. At the hearing, any party may appear in person or be represented by 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 may deny your request for a variance and your fee will be forfeited.

Cancelled hearings require another filing fee of \$450 and postponed hearings require another filing fee of \$100 to cover administrative costs and publication expenses.

### Three Step Test

To qualify for a variance, the Walworth County Board of Adjustment must determine if your request meets **all** three criteria of the three-step test:

**1) UNIQUE PROPERTY LIMITATIONS:** The variance request is due to unique physical limitations of the property, i.e. compliance with the Ordinance(s) is prevented by limitations of the property (steep slopes, drainage or waterways, wetlands, soil types, densely wooded areas, utility and other easements, unusual configuration/dimensions of lot, etc.) which are not generally shared by other properties. **Personal circumstances of an applicant (growing family, personal storage issues; etc.) are not a factor in deciding variances.** Nearby ordinance violations and prior variances do not provide a basis for granting a variance. Minor property limitations, which prevent ordinance compliance and are common to a number of properties, may be addressed by amendment of the Ordinance(s).

**2) UNNECESSARY HARDSHIP:** Strict application of an ordinance requirement (dimensional standard) would unreasonably prevent the owner from using the property for a permitted purpose. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner. You will be asked to demonstrate that compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Board of Adjustment will evaluate the hardship in light of the purpose of the zoning restriction at issue. An applicant may not claim hardship because of conditions, which are self-imposed (for example: splitting a lot to create two substandard lots and then claiming hardship). Courts have also determined that loss of profit or financial hardship do not, by themselves, justify a variance. The property owner bears the burden of proving unnecessary hardship.

**3) NO HARM TO PUBLIC INTERESTS:** A variance will not create substantial detriment to adjacent property, the entire community and the general public. The variance would not undermine the purpose, intent and spirit of the Zoning Ordinance(s) or the public interest.

### VIEWING

The directions to locate your property are very important. The Board of Adjustment may view the property. This is generally done on the same day of the public hearing. **Please identify the area of the variance(s) by staking the corners of the proposed structure prior to the public hearing.** Please have any animals restrained on viewing day as a courtesy to the Board of Adjustment.

### DECISION

The Thursday after the public hearing is when the Board of Adjustment makes their decision regarding the variance request. You may call the Zoning Division of the Land Use and Resource Management Department on that Thursday after 1:00 p.m. for the results. Variances granted by the Board of Adjustment shall expire within twelve (12) months unless substantial work has commenced pursuant to such grant. Since a variance decision may be appealed to the circuit court by anyone aggrieved with the boards decision within 30 days of the decision, the applicant shall proceed with construction only at his/her own risk within the appeal period.

### JUDICIAL REVIEW

Board of Adjustment decisions may be appealed to the Circuit Court, within 30 days of the Boards decision, by a procedure known as certiorari. Following are the general review standards which courts have used to decide appeals of Board of Adjustment decisions. You might consider these points to determine whether any decision you have an interest in is likely to be reversed on appeal.

- ✓ Did the Board decide a matter which it is empowered by statute or ordinance to act on (subject matter jurisdiction)?
- ✓ Did the Board follow proper procedures (e.g. notice, hearing, reviewable record, open meeting law, etc.)?
- ✓ Did the Board apply proper standards in making the decision (e.g. 3 step test for a variance)?
- ✓ Was there a rational basis for the decision (could a reasonable person have reached this conclusion)?
- ✓ Is there evidence in the record (facts) to support the decision?



(Please PRINT or TYPE)

**(2) UNNECESSARY HARDSHIP. Unnecessary hardship is present because . . . .**

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**(3) NO HARM TO PUBLIC INTERESTS. A variance will not be contrary to the public interest . . . .**

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**Attach a plat of survey of your site and a copy of detailed construction plans.**

**IF YOU QUALIFY FOR A VARIANCE**

- The Board may grant only the minimum variance necessary while preserving the purpose and intent of the zoning ordinances.
- The Board may impose conditions on project design, construction activities or operation of a facility to assure that public interests are protected.
- A variance granted by the Board of Adjustment shall expire within twelve (12) months unless substantial work has commenced pursuant to such grant.
- A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing of the decision in the office of the board. For this reason you may choose to delay construction on your project until after the appeal period has expired in order to minimize the risk that the court may overturn the Board of Adjustments decision and void your variance.
- Because a property rather than its owner may qualify for a variance (unique property limitations test), a variance transfers to subsequent property owners.

**Signed:** \_\_\_\_\_  
**(Applicant/Agent/Owner)**

**Date:** \_\_\_\_\_

**Remit to: Walworth County Land Use  
and Resource Management  
Zoning Division  
100 West Walworth Street  
P.O. Box 1001  
Elkhorn, WI 53121**