



11333 N. Cedarburg Road
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www.cityofmequonwi.gov

Office of the City Clerk

BOARD OF APPEALS
Thursday, March 6, 2025
6:00 PM
Christine Nuernberg Hall

Agenda

- 1) Call to Order**
- 2) Approve meeting minutes of February 6, 2025**
- 3) Discussion**
 - a) Procedures and Processes of the Board of Appeals
- 4) Adjourn**

Dated: March 6, 2025

/s/ Kathleen Massey, Chair

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Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM



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BOARD OF APPEALS
Thursday, February 6, 2025
6:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order

Present:

- Chair Kathleen Massey
- Vice Chair Thomas Flanagan
- Board Member Steve Helfer
- Board Member Ramona Larson
- Board Member James Wawrzyn
- Board Member Robert Stern – **Excused**

Also present: City Attorney Sajdak, City Clerk Fochs, Building Inspections Supervisor Golden and interested public.

2) Approve meeting minutes of January 2, 2025

Motion to approve meeting minutes.

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Board Member Flanagan
SECONDED BY: Board Member Helfer

AYES:	Massey, Flanagan, Helfer, Larson, Wawrzyn
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3) Hear evidence concerning; debate, deliberate and decide the request of:

Applicant: Jeffrey & Susan Konkell
Owners: Jeffrey & Susan Konkell
Appeal: Opportunity will be given to all interested in being heard concerning the petition by Jeffrey and Susan Konkell to request a variance to Mequon Code Sec 58-419(a) regarding the placement of their existing generator at 10808 N Lake View Road.

Chair Massey explained the guidelines for the Board of Appeals as well as the process for the meeting. All parties appearing before the Board of Appeals were sworn.

Susan Konkell	10808 N. Lake View Road
Jeffrey Konkell	10808 N. Lake View Road
Greg Golden	11333 N. Cedarburg Road

Attachment: Konkell Minutes 2.6.25 (10095 : BOA minutes 2.6.25)

Amy Daniels 10827 N. Lake View Road
 Mark Daniels 10827 N. Lake View Road

Building Inspections Supervisor Golden began testimony on behalf of the City of Mequon by explaining that he first noted the violation of the placement of the generator during the final inspection. The R-3 zoning requires a front yard setback of 50 feet, and the current location of the generator is 23.2 feet.

The Board asked for clarification of the setback codes in regards to generators being defined as structures. Supervisor Golden recited the portion of code 58-8 defining “structure” as:

Structure means a combination of materials other than natural terrain or plant growth erected or constructed to form among other things, a building, shelter, sign enclosure, retainer, container, support, base, or decoration.

Supervisor Golden said the definition of structure was written to be broadly encompassing, and it includes anything that is not naturally growing. The actual generator is within a case, and that case is manmade as an enclosure or container. Similarly, an air conditioner unit is housed by an external container that protects that condenser. Both are common examples of structures.

Chair Massey pointed out Exhibit #7 from the Konkels provided within the packet, which were guidelines provided by the generator company saying to consult local codes. Supervisor Golden was unaware of any communication from the applicants related to verifying such code from the City staff before the installation.

Supervisor Golden explained the difference between the zoning for offsets and for setbacks and the measurements as determined by the ultimate street right of way. On the Plat of Survey supplied by the Konkels, it clearly shows the correct 50-foot setback as a red line. Supervisor Golden had used this survey and added his own notes to provide two highlighted spots as the alternate locations that would have met code requirements for generator placement.

The Board asked about how setbacks are determined. Supervisor Golden explained that setbacks were created many years by the City of Mequon based on zoning for safety (to prevent the spread of fire, etc.) or aesthetics, including the 50-foot setback from the road.

The Board discussed the topography surrounding the house and the two compliant placement options for the generator supplied by Supervisor Golden. One option measured 6 feet by 8 feet; the other option measured 10 feet by 10 feet. Both areas would allow for placement on concrete, would not have been affected by standing water and would have access to electricity. These site locations were discussed in regards to the location of a well pipe and landscaping.

City Attorney Sajdak clarified that some page numbers of the packet may have been incorrectly referenced by the Board. This was a result of there being a packet for the original meeting date of January 2 and the new packet created for February 6. Because of the additional submissions by the Konkels and the minutes from the January meeting, the packet pages were not identical. *For added transparency, Deputy Clerk Kong has referenced the Exhibit number or Document Name being referred to rather than a packet page number for use in these minutes.*

Applicant Jeffrey Konkel began his testimony by saying that he had called to request an inspection, and that is when he determined his contractor had not applied for a permit. Supervisor Golden would not begin an inspection until the permit was in order. The generator was placed based on the applicant's desire to avoid flooded areas of the yard, their well placement and the potential for carbon monoxide fumes near the house. The Konkels wanted to place the generator as far from the house as possible.

Susan Konkel referred to the letter supplied with their application for the variance. It described the unique shape of their property as it faces three streets, which she feels creates a hardship for them to meet all the offsets. Their surveyor calculated that only 22.1% of their property is buildable. The generator location was selected based on it having the fewest issues with water.

Ms. Konkel also questioned having the generator being defined as a structure and how that compares to electrical equipment. She referred to their Exhibits numbered 10, 11, 12 and 13 which were definitions printed from generator website discussions.

Ms. Konkel wanted to know the process for how setbacks can be changed. Chair Massey explained that this Board does not modify code from the City of Mequon; only the Common Council can approve of such changes.

Ms. Konkel shared some history of their house and property. The setbacks limited how and where they built their home from the start. They have dealt with issues regarding a 50-foot setback since they initially built on the property. A generator is a necessity based on the frequent loss of power; a portable generator was no longer a feasible option for them.

The contractor and the Konkels believed they were within the correct setbacks. It was during the process of obtaining the permit that they ran into issues with the contractor and the placement of the generator. It was installed in April, but it was September before the inspection and issues were brought to light. They didn't know that the permits had not been applied for up front. The contractor said he was open to moving the generator, but the Konkels did not like the two options provided by Supervisor Golden. There would be an additional cost to move it.

The Konkels do not believe the generator can go closer to the house as the ground is not settled, and it could sink. According to their well pump company, they need to keep 25 feet of clearance to maintain the well pump. The Konkels feel that the well pump access and the amount of potential standing water create a hardship with this property. The Konkels are also trying to be good neighbors and avoid placing the generator too close to the neighboring property while getting as far from their own house as possible. The current placement is facing the park and thus away from neighbors. It is also in a higher spot of their yard to avoid potential standing water.

Mr. Daniels and his wife are neighbors to the northwest of the Konkels. They attested to the amount of water that drains and stands due to heavy rains or spring thaw. Mr. Daniels believes the current location of the generator is the best spot, especially due to the water. Other locations would be closer and noisier for the surrounding neighbors. He wanted to emphasize that the

Konkels take meticulous care of their yard. He had no doubt that the Konkels would apply the same care to landscape the area around the current generator.

Ms. Daniels reiterated that the unique landscape and topography of the Konkels’ property created a challenge in placing the generator. The Daniels would both support allowing the Konkels to keep the generator in its current spot.

Board Member Larson asked for clarification of a structure versus a container as it relates to a generator. Supervisor Golden and City Attorney Sajdak provided examples of structures such as a premade shed or home. These can be assembled by a manufacturer and placed on a property and are structures just as the generator or an air conditioner unit would be.

Ms. Konkel cited Exhibit 11 from Electrical Contractor Magazine which discusses NEC code and definitions of Building, Structure or Equipment. She interpreted this to mean their poured concrete pad would be the actual structure, not the generator. She further believes the generator should be looked at as electrical equipment not a structure.

Supervisor Golden explained that he is a trained Master Electrician and is familiar with NEC codes mentioned in that article. However, when performing his inspections for the City he must adhere to both NEC and the zoning code established by the City of Mequon. When he performs an inspection, he makes sure the electrical and gas codes are met as well as the zoning. He looks at the placement to ensure it meets setbacks and also that it conforms to the electrical and gas codes to be safe within those guidelines.

Motion to close public hearing.

RESULT:	Approved by Voice Acclamation [Unanimous]
MOVED BY:	Board Member Massey
SECONDED BY:	Board Member Helfer

AYES:	Massey, Flanagan, Helfer, Larson, Wawrzyn
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Having closed the public portion of the hearing, the Board continued its discussion on the record before making its decision. The Board members discussed whether the generator is a structure and subject to the setback requirements. While both the Konkels and the Daniels showed the challenges posed by the property, the City had provided at least two alternative locations that would comply with the setbacks.

Board Member Helfer said the code’s definition of structure could be clearer especially how it refers to a “closure” or “container” around a piece of equipment. He also commented on the levels of water shown in some of the exhibits and felt there was hardship related to the concerns by the applicants of water on the property.

Board Member Flanagan said a guideline for installing the generator says to be at least 18 inches from the house. He asked if other guidelines stipulate why this unit could not be placed closer to the house because the Kohler guidelines also said it can be closer. While the Konkels did not like the options provided by the City and had poor guidance from their contractor, that does not

Attachment: Konkel Minutes 2.6.25 (10095 : BOA minutes 2.6.25)

create a hardship. He also suggests that something be brought to the Common Council to address the language in ordinances to make the definition clearer.

Board Member Larson wanted to clarify the difference between a fully constructed container and something that is assembled and then placed on a homeowner’s property. She agreed with Board Member Helfer.

Motion to deny the variance.

RESULT: Approved by Roll Call Vote [3 to 2]
MOVED BY: Board Member Wawrzyn
SECONDED BY: Board Member Massey

AYES: Massey, Flanagan, Wawrzyn
NAYS: Helfer, Larson

4) Adjourn

Motion to adjourn at 8:09 PM

RESULT: Approved by Voice Acclamation [Unanimous]
MOVED BY: Board Member Helfer
SECONDED BY: Board Member Wawrzyn

AYES: Massey, Flanagan, Helfer, Larson, Wawrzyn

Respectfully Submitted,

*Beth Kong
Deputy Clerk*

Attachment: Konkel Minutes 2.6.25 (10095 : BOA minutes 2.6.25)



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Office of the City Attorney

MEMORANDUM

TO: Board of Appeals
 FROM: Brian C. Sajdak, City Attorney
 DATE: February 24, 2025
 RE: Board of Appeals Rules and Regulations

Introduction

You have asked that I provide some background concerning the adoption of rules/procedures for the Board's operations. Below you will find a discussion concerning this topic. It begins with a review of the general authority granted to the Board, and then a discussion of specific topics follows. Lastly, you will also find attached a set of proposed rules for your consideration.

Discussion

Under Wis. Stat. § 62.23(7), local municipalities have broad discretion to enact zoning ordinances and land use regulations. McKee Fam. I, LLC v. City of Fitchburg, 2017 WI 34, ¶ 35, 374 Wis. 2d 487, 502, 893 N.W.2d 12, 20. When a municipality adopts a zoning regulation, the ordinance adopting such regulation must "provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals 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." Wis. Stat. § 62.23(7)(e)1.

Once created, a board of appeals adopts "rules in accordance with" the ordinance. Wis. Stat. § 62.23(7)(e)3. See also Powers—Procedure and procedural powers, 8A McQuillin Mun. Corp. § 25:323 (3d ed.) ("a board ordinarily is authorized to adopt rules"); Rules and regulations as to procedure, 3 Rathkopf's The Law of Zoning and Planning § 57:70. Rules adopted by a board of appeals must not be inconsistent with the enabling statute and ordinance. See Rules governing practice and procedure before boards, 8A McQuillin Mun. Corp. § 25:345 (3d ed.); Power to make rules, 4 Am. Law. Zoning § 40:10 (5th ed.). In general, "a zoning board of appeals is vested with discretion to dispose of matters within its province, [however] its acts are judicial in nature and are subject to review and reversal when they constitute an abuse of discretion and are arbitrary." Powers—Procedure and procedural powers, 8A McQuillin Mun. Corp. § 25:323 (3d ed.)

A decision of a board of appeals should be based upon substantial evidence, which is

Attachment: BOA Rules Memo (10113 : BOA Rules)

evidence of such convincing power that reasonable persons could reach the same decision as the BOA, that is, credible, relevant and probative evidence upon which reasonable persons could rely to reach the challenged decision by the BOA. Substantial evidence is less than a preponderance of the evidence, but more than a mere scintilla of evidence and more than conjecture and speculation. [T]he weight to accord the evidence lies within the discretion of the municipality.

Savich v. Columbia Cnty. Bd. of Adjustment, 2024 WI App 43, ¶ 93, 413 Wis. 2d 140, 195–96, 11 N.W.3d 160, 187 (internal quotations and citations omitted). Substantial evidence can exist ever where there is substantial evidence to support a different or opposite conclusion. Sills v. Walworth Cnty. Land Mgmt. Comm., 2002 WI App 111, ¶ 11, 254 Wis. 2d 538, 549, 648 N.W.2d 878, 883. However, in general proceedings before a board of appeals “are not governed by strict rules of judicial procedure. Of necessity, the proceedings are more or less informal, and technical rules of procedure usually are not required to be zealously enforced.” Rules governing practice and procedure before boards, 8A McQuillin Mun. Corp. § 25:345 (3d ed.) As one commentator notes:

The primary purpose of hearings before a board of appeals is to permit persons interested in the event to furnish information which may assist the board in the discharge of its duty of determining whether or not a variance or an exception should be granted in a particular case. Consequently, the hearing should be conducted informally, and considerable latitude should be given to those present. But while a hearing of this nature may be more or less informal, and technical and legal rules of evidence and procedure need not be followed, no essential element of a fair hearing can be dispensed with.

Hearsay and necessity of sworn testimony—Necessity that factual statements be made under oath, 3 Rathkopf’s The Law of Zoning and Planning § 57:59. As such, proceedings before a board of appeals do not follow rigid rules of evidence. See The rules of evidence, 4 Am. Law. Zoning § 40:31 (5th ed.) “Whether evidence shall be received is, in general, a matter which is left to the discretion of the board of appeals. Refusals to hear testimony are infrequent, and such refusals are relied upon as grounds for reversal only in instances of gross abuse or where the testimony actually admitted does not support the conclusions of the board.” Id. Nonetheless, “the attitude and conduct of members of the board should be judicial and impartial.” Conduct of board, 8A McQuillin Mun. Corp. § 25:351 (3d ed.)

The Application

In short, an applicant can invoke the jurisdiction of the board to grant a particular kind of relief only by requesting the kind of relief he desires. An application must, of course, include anything which is required by the zoning ordinances as a condition precedent to the granting of the relief sought. Failure to meet statutory

requirements in drafting the application for relief is grounds for judicial annulment if the applicant is successful on the administrative level.

It should not be concluded that the courts view board pleadings in a highly technical manner, without regard to the intended informality of board procedure. A defective application can be amended by the applicant. Where an application for relief is ambiguous, the courts will undertake to construe it. . . . Occasionally, where the record discloses that certain relief is proper, such relief will be granted although the applicant technically requested other relief. As a reviewing court usually has broad authority to grant relief, it is within the power of such a court to grant a variance on an application which technically requested a special exception. Applicants who are in doubt as to the form of relief to which they are entitled can apply for both.

Whether an application states grounds for relief which is within the jurisdiction of the board of appeals is a question which will be reviewed by the courts. If a board declines jurisdiction of a matter within its cognizance, the matter will be remitted to the board for further action.

Application for relief, generally—Content of application, 4 Am. Law. Zoning § 40:14 (5th ed.)

Witnesses & Cross Examination

The Chair may compel the attendance of any witnesses. Wis. Stat. § 62.23(7)(e)3. “A zoning and hearing board is free to accept or reject, in whole or in part, the testimony of any witness.” Hearing—Witnesses, 8A McQuillin Mun. Corp. § 25:357 (3d ed.) “The credibility of witnesses and the determination of issues of fact are matters solely within the province of a zoning board of appeals.” Id. “A zoning hearing board acting in the capacity of fact finder has the discretion to reject even uncontradicted testimony if it finds that the testimony lacked credibility.” Id. While not expressly required, cross examination of witnesses should ordinarily be allowed. Id.; see also The right of cross examination, 4 Am. Law. Zoning § 40:33 (5th ed.) (“cross-examination is the best way to get at the truth, and . . . should not be denied in administrative hearings.”)

Ex Parte Communications

An ex parte communication is a one-sided communication between a litigant or their representative and the judge presiding over a case involving the litigant. In re Paternity of B.J.M., 2019 WI App 10, ¶ 24, 386 Wis. 2d 267, 279–80, 925 N.W.2d 580, 586. These communications are important to avoid because they “have the potential to erode public confidence and create the appearance of partiality.” Id. at ¶ 25; see also Ex parte communications with interested parties, 8A McQuillin Mun. Corp. § 25:352 (3d ed.) (board “members acting in a quasi-judicial capacity are held to a high standard: neutrality and the appearance of neutrality are equally critical in maintaining the integrity of the judicial and quasi-judicial processes.”)

Attachment: BOA Rules Memo (10113 : BOA Rules)

Evidence

The decision of a board of adjustment or zoning appeals must be based upon facts as established by the evidence properly introduced and before it,¹ or in some instances upon the basis of proof produced and the facts otherwise within the knowledge of the board,² or merely upon the basis of the board's own knowledge,³ and in this respect it is said that members of a zoning board of review are presumed to have a special knowledge of local conditions and needs.

All relevant evidence may be introduced in the proper mode, at hearings before zoning boards. However, such boards are not bound by strict rules of evidence and the procedure may be informal. Incompetent, irrelevant and immaterial evidence should be rejected and not considered by the board. However, the admission or reception of improper or illegal evidence will not of necessity render invalid the action of the board. "Material evidence," as required to support zoning board's decision, is relevant evidence that a reasonable person would accept as adequate to support a rational conclusion. The amount of material evidence required to support a zoning board's or agency's decision must exceed a scintilla of evidence but may be less than a preponderance of the evidence.

Hearing—Evidence, 8A McQuillin Mun. Corp. § 25:356 (3d ed.)

Board members may utilize their own personal knowledge of a matter in making a decision, but when they do so the record must reflect that they used such knowledge. See Personal knowledge of board members, 4 Am. Law. Zoning § 40:37 (5th ed.); Utilization of personal knowledge of members of the board—Facts of personal knowledge must be set forth in the record, Rathkopf's The Law of Zoning and Planning § 57.61. However,

The federal courts, in three zoning cases, have held that if there are facts pertinent to the inquiry and relied upon by the board in reaching its decisions, arising either out of the "expertise" of its members or from an inspection of the premises or area, these facts should be revealed at the hearing so the opportunity is afforded to meet them by evidence or argument. Opinions of the board members as to such matters as the cost of the construction of a building, cost of site preparation, or the suitability of particular construction methods are not, however, matters so related to the administration of a zoning ordinance as to come within the presumptive expertise of a board of appeals. Consequently, where expert testimony that the land development cost was prohibitive, taking the property out of the market for residential use, was uncontradicted and unimpeached, a contrary finding was an abuse of discretion.

Utilization of personal knowledge of members of the board—Opportunity to refute purported personal knowledge, Rathkopf’s The Law of Zoning and Planning § 57:62.

Rehearing, Reconsideration and Repeat Applications

Wisconsin courts have determined that a board of appeals is without power to reopen or reconsider cases. See Goldberg v. City of Milwaukee Bd. of Zoning Appeals, 115 Wis. 2d 517, 521–22, 340 N.W.2d 558, 560 (Ct. App. 1983)(“our research persuades us that the better rule is that a zoning board acts in excess of its power in reopening a proceeding which has once been terminated.”) As a quasi-judicial body, this rule is necessary because otherwise “there would be no finality to the proceeding; the result would be subject to change at the whim of members, or due to influence exerted upon them or other undesirable elements tending to uncertainty and impermanence.” Id. (Quoting Miles v. McKinney, 174 Md. 551, 199 A. 540, 546 (App.1938)). As the Court of Appeals notes:

We discern no persuasive reason why the Board should be required to revisit variance requests already denied, notwithstanding a change of ownership of the property, if the facts underlying the Board's denial have not changed. . . . the rule brings “certitude and finality” to a decision of the Board. We deem that a legitimate purpose. As such, the rule does not violate . . . due process rights.

Tateoka v. City of Waukesha Bd. of Zoning Appeals, 220 Wis. 2d 656, 669–70, 583 N.W.2d 871, 876–77 (Ct. App. 1998). In Tateoka, the Court upheld a the Waukesha Board of Appeals rule that read:

Rehearings, reconsiderations and new applications seeking the same relief concerning the same property after a previous application has been denied will not be heard by the Board of Appeals unless a substantial change of conditions or circumstances has intervened between the time the matter was first decided by the Board of Appeals and the subsequent application. A change of ownership or the passage of time without additional conditions or circumstances will not justify another hearing before the Board.

Id. at 661. As such, the “board of appeals has power to adopt reasonable rules for rehearing.” Rehearings; reconsiderations of decisions, 8A McQuillin Mun. Corp. § 25:365 (3d ed.)

“Under the ‘successive application’ doctrine, the general rule is that a zoning board or planning commission may not entertain a second application concerning the same property after a previous application has been considered unless a substantial change of conditions has occurred or other considerations materially affecting the merits of the request have intervened between the first and second application.” Id.

Attachment: BOA Rules Memo (10113 : BOA Rules)

The basis for these rules has been held to be both an application of *res judicata* and also collateral estoppel:

While it is well established that the doctrine of *res judicata* applies to administrative decisions such as those relating to special permits and variances, it is said that "... the rule of *res judicata* does not bar the making of a new application for a variance, or for modification or enlargement of one already granted, or for lifting conditions previously imposed in connection with the grant of a variance, upon a proper showing of changed circumstances or other good cause warranting a reconsideration by the local authorities.

Authority to rehear—Res judicata, 4 Am. Law. Zoning § 40:49 (5th ed.).

Given limited authority of governmental agencies, collateral estoppel, rather than *res judicata*, is often more appropriate for application in the administrative context. The factors considered in applying collateral estoppel include: (1) whether issue decided in prior adjudication was identical with issue presented in present action; (2) whether prior adjudication resulted in a judgment on merits; (3) whether party against whom collateral estoppel is asserted was a party or in privity with a party to prior adjudication; and (4) whether party against whom collateral estoppel is asserted had a full and fair opportunity to litigate issue in prior proceeding.

New applications for same relief; collateral estoppel, 8A McQuillin Mun. Corp. § 25:366 (3d ed.) Under both theories, however, change in circumstances is critical. "In fact, an allegation that circumstances have changed since the prior decision is essential to the jurisdiction of the board." Change of circumstances, 4 Am. Law. Zoning § 40:51 (5th ed.) "Where there was no change of facts or circumstances between the time of the prior determination denying the variance and the present application for the same relief, the board's determination to adhere to a prior decision cannot be challenged as arbitrary and unreasonable even if the prior determination might have been questioned at the time, where there was no review of the earlier ruling, since to permit a review of the later denial would, in effect, constitute permission to review the earlier one after the statutory time for review had passed." Power to entertain new application for same relief, 3 Rathkopf's The Law of Zoning and Planning § 57:73. However, whether there has been a substantial change in circumstances is a determination for the board and there should be an opportunity for a hearing. Id. See also New applications for same relief; collateral estoppel, 8A McQuillin Mun. Corp. § 25:366 (3d ed.); New application for identical relief, 4 Am. Law. Zoning § 40:52 (5th ed.).

"New evidence" is not, however, without limitations. "Even where change of circumstances is proved, a board of appeals may not reopen a case where a person has changed his position, relying upon the decision in question." Change of circumstances, 4 Am. Law. Zoning § 40:51

(5th ed.) “Evidence of changed circumstances will support a different decision only if it relates to the objections which supported the board's decision under the earlier application. An applicant cannot, absent proof of new and relevant circumstances, support a new application solely on the basis of new arguments.” New application for identical relief, 4 Am. Law. Zoning § 40:52 (5th ed.) “Since the function of the board is quasi-judicial, it has no inherent power to review its decision by vacating, rescinding, or altering it after it has been made.¹ It may, however, without holding a further public hearing, correct a clerical or mathematical error in the form of its decision so that the record will reflect the true intention of the board.” Power to reconsider decision already made, Rathkopf's The Law of Zoning and Planning § 57:72.

BCS

**RULES AND REGULATIONS
FOR THE CITY OF MEQUON BOARD OF APPEALS**

SECTION 1. General Governing Rules

The board of appeals of the City of Mequon, Wisconsin, adopts these rules in compliance with, and shall be governed by Wis. Stat. § 62.23 and Article IX of Chapter 2 and Sec. 58-41 of the Mequon Municipal Code, as amended. In the event of a conflict between these rules and the laws of the state or the ordinances of the City, the state laws and local ordinances shall prevail.

SECTION 2. Organization, Officers and Personnel

1. The mayor shall, at each common council organizational meeting, appoint a chair and vice-chair from among the board's members.
2. The chair shall preside at all meetings of the board. In the absence of the chair, the vice-chair shall preside.
3. The chair shall decide all points of order and procedure, unless overruled by a majority of the board present at that time.
4. The officer presiding at the meeting and the secretary shall sign the resolutions, minutes, and other official documents adopted or approved by the Board.
5. The Clerk shall conduct all correspondence of the board; file all appeals, papers and records; publish and mail all notices required by law, ordinance, rule or request of the chair; prepare and keep calendars, dockets and minutes of board proceedings; and generally attend to all clerical work of the board.
6. The attorney representing the board shall provide legal guidance, information, and opinions to the board, assist the chair by providing interpretations as to points of order and procedure including parliamentary procedure, and prepare decisions, resolutions, ordinances, rules, and other official documents to be adopted or approved by the board.

SECTION 3. Meetings

1. Regular meetings of the board for the hearing of cases and the transaction of other business shall be held on the first Thursday of each month at 6:00 p.m. in Christine Neurnberg Hall at City Hall. The chair may cancel any such monthly meeting where there is no business to be conducted by the board.
2. Special meetings may be called by the chair to handle business of the board as necessary.

3. A quorum shall consist of four (4) members of the board. In the event of one absence, abstention, or vacancy, the first alternate shall act with full power. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one member of the board so refuses or is absent.
4. All meetings shall be opened to the public and held in accordance with the Wisconsin open meetings law.
5. The proceedings of the board shall be governed by Robert's Rules of Order. Newly Revised, insofar as applicable.
6. No board member shall participate in the decision of or vote upon any case in which they shall be financially interested, directly or indirectly, but the chair shall direct the alternate member to act in their stead.
7. The clerk shall keep minutes of the meeting and record the vote of each member on every question in the minutes, or, if the member is absent or fails to vote, shall indicate such in the record of the proceedings.
8. The applicant¹ may appear in person at the hearing, or may be represented by an attorney or a duly authorized agent having a power of attorney. In the absence of an appearance for or against an applicant, the board may dismiss the application or may dispose of the matter on the records before it.
9. The chair may compel the attendance of witnesses by subpoena either upon motion of the board or as requested by the appellant/applicant or a representative of the applicable city department. Written request for subpoenas must be filed with the clerk not less than five (5) days prior to the hearing except by special permission of the chair.
10. All witnesses shall be sworn by the chair, clerk, or attorney for the board before testifying.
11. Members of the board shall attempt to avoid *ex parte* contact. As defined here, *ex parte* contact refers to communication that occurs outside of a noticed meeting. Members of the board have a duty to not prejudge a case, and to base their decisions only on the material and facts presented at public meetings and hearings on the case. Despite best efforts it is sometimes not possible to avoid *ex parte* contact. When that happens the member should publicly report the content and context of the *ex parte* contact in full at the public hearing or meeting.

¹ Note: When used within these Rules and Regulations, the terms applicant or application are used interchangeably with the terms appellant and appeal.

SECTION 4. Applications

1. Unless otherwise provided for in the municipal code, a written application for a variance or appeal from any order, requirement, decision, or determination by city staff shall be filed with the clerk of the board on forms furnished by the clerk. The board shall consider no appeal or application unless it is made on the required form. Any communication, except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing. Upon receipt of any communication purporting to be an appeal or application, the clerk shall supply the applicant with the proper forms in order to be considered by the board.
2. The applicant shall provide all information requested on the form. The reason for the application or appeal must be stated and the reasons why the request should be approved must also be stated by the applicant. If a variance is requested, facts should be stated upon which findings may be made by the board to justify the granting of the variance. If an appeal is based upon an alleged error or abuse of discretion of an administrative official or body, facts should be stated as to the nature thereof.
3. If the opinion of the chair or clerk, after consultation with the attorney representing the board, determines that the application is lacking any required information, or if any additional information is necessary to inform the board of the facts of the appeal or application, the chair or clerk shall provide a written request to the applicant or appellant to complete or supplement the application. Failure to supply such information within thirty (30) days of the date of the request may be considered by the board as a failure to comply with application and appeal procedure and the case may be dismissed for failure of timely filing.
4. At the time of the application, and as part of the written application materials, the applicant shall provide all information and arguments to be considered as part of their application except where completion or supplementation of the application is required under paragraph 3 above.
5. An applicant may withdraw their application at any time prior to decision thereon, but if a motion is pending to grant or dismiss the application, such motion shall have precedence. Withdrawal of the application shall not entitle the applicant to refund of the filing fee.
6. Rehearings, reconsiderations and new applications seeking the same relief concerning the same property after a previous application has been denied will not be heard by the board unless a substantial change of conditions or circumstances has intervened between the time the matter was first decided by the board and the subsequent application. A change of ownership or the passage of time without additional conditions or circumstances will not justify another hearing before the board. The clerk, after consultation with the chair and the attorney representing the board, shall provide written notice to the applicant that the requested rehearing, reconsideration, or new application will not be considered under this rule. The applicant may appeal this

determination to the full board who may agree to hear the rehearing, reconsideration, or new application by an affirmative vote of 3/4 of the members present and voting upon a finding that substantial new evidence or a change in circumstances exists which could not reasonably have been presented at the previous hearing. Such appeal shall be made within five business days of the applicant's receipt of the notice from the clerk, and shall be in writing, duly verified (made under oath and subject to penalty for perjury) and shall recite the reasons for the request and be accompanied by necessary data and diagrams.

SECTION 5. Contested Hearings

1. The applicant has the burden of proof to establish through substantial evidence that they are entitled to a variance or other relief being sought. Substantial evidence is less than a preponderance of the evidence, but more than a mere scintilla of evidence and more than conjecture and speculation. It is evidence of such convincing power that reasonable persons could reach the same decision as the BOA, that is, credible, relevant and probative evidence upon which reasonable persons could rely to reach the decision of the board.
2. Hearings on cases shall normally follow this order:
 - (a) Chair makes statement of hearing notice.
 - (b) Staff presents report and recommendations.
 - (c) Applicant presents evidence.
 - (d) Members of the public present evidence, questions and comments.
 - (e) The staff and applicants may make rebuttals.
3. Prior to the staff report and recommendations, the board may hear arguments on any question of jurisdiction and may request that briefs be filed on the point. The board may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question and render a decision on the merits as if it had jurisdiction. The board may make an immediate determination upon a finding that it lacks jurisdiction. If the board determines by motion that it lacks jurisdiction, it shall be recorded in the decision as a vote to deny the application.
4. Orderly procedure requires that each side shall proceed without interruption by the other; that all arguments and pleadings shall be addressed to the board and that there be no questioning or arguments between individuals.
5. During the hearing, the chair, board members, the applicant, and members of the staff may ask questions and make appropriate comments pertinent to the case; however, debate or argument directly with another participant shall be avoided. The chair, board members, and the attorney representing the board may direct any question to the applicant or to any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case.

6. All supporting evidence for and against each case shall be presented to the assembled board. The applicant shall be responsible for the presentation of all information supporting their case. If new factual information or arguments are made at the hearing that were not part of the application, the board shall, upon request, consider an appropriate adjournment to allow city staff or a material party in opposition to the application sufficient time to verify or rebut the new information.

7. The board may take administrative notice of the laws of the State of Wisconsin, ordinances of the city, appropriate performance standards which are available in model codes or ordinances or which have been developed by planning, manufacturing, health, architectural and engineering research organizations, and of other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

8. Prior to any hearing, the applicant and city staff may mutually agree in writing to an adjournment of the hearing for a period specified in the written agreement. Alternatively, an appellant may make a written request of the chair for adjournment with a waiver of the timing requirement. The chair may grant or deny the request at his or her discretion. If an appeal involves the use of property, and the appellant is not the owner of the subject property, the owner must consent to an adjournment described above. No adjournment may extend the hearing of an application beyond one year from the date of the determination that is the subject of the appeal, or the date of application in the event of a variance application.

9. The board shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative or repetitious testimony or evidence. The chair shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the board present.

10. The board may take a case under advisement for later consideration and determination, or may defer action when it concludes that it is appropriate to gather additional information, to hear from additional witnesses, to seek additional input from legal counsel, or to allow additional time for deliberation, the board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing, except that in the case of an appeal no adjournment shall extend the hearing beyond one year from the date of the determination that is the subject of the appeal, or the date of application in the event of a variance application. Notice of such adjournment shall be given to the absent members of the board.

SECTION 6. Decisions and Disposition of Cases

1. If a quorum is present, the board may take action under this section by a majority vote of the members present. The grounds of every such determination shall be stated.

2. The board's decision shall be rendered in written form pursuant to the provisions of Sec. 58-41(g) of the municipal code.

3. Conditions stated in the board's decision shall also be set forth in the building or occupancy permit issued by the city. Such permit shall be valid only as long as the conditions upon which it is granted are observed. Upon request of the board, the operator of an approved use shall file with the city a written report certifying conformity with all conditions or limitations imposed by the board. Failure to comply with this request may result in revocation.

4. Variances or special exceptions approved by the board shall expire one (1) year after issuance, or as directed within the board's decision, if the performance of work is required and substantial work has not commenced. Applicants must apply to the board for an extension of time to comply with such conditions prior to the expiration of the time to act. Failure to do so may result in revocation.

5. Any person or persons, jointly or severely aggrieved by any decision of the board, or any officer, department, board or bureau of the city, may appeal the decision of the board to the circuit court. Such petition shall be presented to the circuit court within thirty (30) days after the written decision of the board has been filed.

SECTION 7. Amendment or Suspension of Rules

1. These rules may be amended or revoked by a majority vote of the board at any meeting, provided written notice of the proposed amendment or change is given to each member at least ten (10) days before such meeting.

2. Suspension of these rules may be had at any meeting upon the passage of a motion to suspend the rule(s) by the affirmative vote of a majority of the board members present and voting.

Adopted March 6, 2025



11333 N. Cedarburg Road
 Mequon, WI 53092-1930
 Phone: 262-242-3100
 Fax: 262-242-9655

www.ci.mequon.wi.us

Office of City Clerk

TO: Board of Appeals
FROM: Caroline Fochs, City Clerk
DATE: February 27, 2025
SUBJECT: Application Process

Background

Several years ago, the Clerk's Department revised the Board of Appeals application for clarification purposes. Two applications were created, one for an Administrative Appeal and a separate application for a Variance Request, see attached. With the new format, verbiage was added to provide an explanation of the process and the required submittals. This is provided to each applicant.

Also attached are samples of applications from other municipalities in Wisconsin for your reference.

Attachments:

FORM_Administrative_Application (PDF)
 FORM_Variance_Application (PDF)
 Milwaukee (PDF)
 Madison (PDF)
 Hudson (PDF)
 Summit (PDF)
 Dodgeville (PDF)
 Twin Lakes (PDF)
 BOZ Appeal for Variance Application (PDF) (PDF)

BOARD OF APPEALS ADMINISTRATIVE APPEAL APPLICATION

CITY OF MEQUON, WISCONSIN

Applicant: _____ Address: _____

City/zip: _____

Owner: _____ Address: _____

City/zip: _____

Contact Person/Name: _____

Phone Number: _____ Email: _____

TO THE BOARD OF APPEALS:

The above hereby requests an appeal to a decision made by:

(please list the City Department or Board/Commission/Committee whose decision you are appealing)

APPLICANT MUST PROVIDE:

Application form
\$250 filing fee

1 copy each of the following documents

1. Copy of denial letter if any, or a description of the denial
2. Letter explaining the reason for the appeal

FOR OFFICE USE ONLY

Receiving Officer: _____	Received Date: _____
Parcel #: _____	Hearing Date: _____
Zoning District: _____	Receipt #: _____
Alderman & District #: _____	Published: _____

- c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.

Attachment: FORM_Administrative_Application (10111 : Application)

Board of Appeals Overview – Appealing an Administrative Decision

City of Mequon, Wisconsin

Introduction

The Board of Appeals (BOA) is a quasi-judicial body created and regulated by Wis. Stat. § 62.23(7)(e) and City of Mequon ordinances section 58-41. The purpose of the Board of Appeals is to afford any aggrieved person, officer, department, board or bureau of the City, affected by any decision of an administrative officer, the right to appeal the decision.

It is very important that your application provide information that is clear and accurate. In order for City staff and the members of the Board to understand the scope of your request, your application must have enough information to effectively communicate the nature of your appeal. At the hearing, the members of the BOA and representatives from various City departments will depend on the materials you have submitted in order to fairly evaluate your claim, and render an appropriate decision.

How the Process Works

Step 1: Applying for an Administrative Appeal

Any aggrieved person, officer, department, board or bureau of the City, affected by any decision of an administrative officer, is qualified to appeal to the BOA. An appealable decision of an administrative office can be written or verbal. The applicant has the burden of proof to demonstrate at a public hearing before the Board of Appeals. The application can be picked up at the City Clerk's Office or found on the City's website under Boards, Committees & Commissions/Board of Appeals.

Step 2: Prepare your application and supporting plans and materials.

Part of the application submittal process requires that detailed information be provided regarding the nature of your appeal. This may include photos, copy of the administrative officer's decision, a summary of the decision or other documentation. Depending on what nature of appeal you are making to the Board, different types of documents may be required. Please contact the City Clerk's Office if you have any questions about what materials are needed for your appeal. When you have prepared all of the necessary materials, return them to the City Clerk's Office, along with the \$250 application filing fee. Checks may be made payable to: The City of Mequon.

Step 3: City staff will process your application and forward it to Board of Appeals

The City Clerk's Office will review your application and it may be determined that more information is required before a recommendation can be made. If such a request for additional information is made, it is very important that you respond to it promptly. Any delay in responding to requests for additional information may result in further scheduling delays before your item can be considered before the BOA.

Once it is determined that you have submitted sufficient information to proceed to a hearing, you will be placed on the next available agenda. The BOA meets on the first Thursday of each month at 6:00 pm at City Hall, 11333 N. Cedarburg Road.

Step 4: A public hearing is held

At the public hearing, the Board will review submitted materials, staff reports, and any written letters or comments that the Board has received. The Board will take oral testimony from the applicant, City staff and any interested parties at the public hearing. As a general rule, all of the Board's hearings are open to the public and the public is invited to attend any session of the Board of Appeals.

Step 5: The Board will render a verbal decision and will provide a written decision

The Board will determine whether, as applied to the particular facts and circumstances presented, or not the administrative decision is in accord with the terms of the Code and State laws. In making its decision, the Board's review is generally limited to the record before the decision maker whose decision is being appealed. In reviewing that decision, the Board will consider: (1) whether decision maker kept within its jurisdiction; (2) whether the decision maker proceeded on a correct theory of law; (3) whether the decision maker's decision was arbitrary, oppressive, or unreasonable; and (4) whether the evidence was such that the decision maker might have reasonably made the determination in question. After the hearing, a copy of the written decision will be mailed to you according to the City of Mequon code 58-41(g).

If your appeal is denied by the Board, you have the right to appeal. Anyone aggrieved by a decision of the Board of Appeals has the right to appeal that decision to Circuit Court within 30 calendar days of the date of the written decision.

Note: If you have questions regarding whether going to the Board of Appeals is your best course of action, appeals to the Circuit Court, or the effect of a Board of Appeals decision, please contact legal professionals.

BOARD OF APPEALS VARIANCE APPLICATION

CITY OF MEQUON, WISCONSIN

Applicant: _____ Address: _____

City/zip: _____

Owner: _____ Address: _____

City/zip: _____

Contact Person/Name: _____

Phone Number: _____ Email: _____

TO THE BOARD OF APPEALS:

The above hereby requests a variance to City of Mequon Code Sec. #: _____
regarding:

(street address or legal description)

in order to: _____

APPLICANT MUST PROVIDE:

Application form

\$250 filing fee

1 copy each of the following documents

1. Copy of denial letter if any, or a description of the denial
2. Letter explaining hardship or practical difficulty in complying with the ordinance requirement(s)
3. Detailed dimension drawing of/and indicating area where appeal/variance is requested
4. Elevation drawings if appropriate (4 views)

FOR OFFICE USE ONLY

Receiving Officer: _____	Received Date: _____
Parcel #: _____	Hearing Date: _____
Zoning District: _____	Receipt #: _____
Alderman & District #: _____	Published: _____

c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.

Board of Appeals Overview – Appealing a Variance Decision

City of Mequon, Wisconsin

Introduction

The Board of Appeals (BOA) is a quasi-judicial body created and regulated by Wis. Stat §62.23(7)(e) and City of Mequon ordinances section 58-41. The purpose of the Board of Appeals is to afford any aggrieved person, officer, department, board or bureau of the City, affected by any decision of an administrative officer, the right to appeal the decision.

It is very important that your application provide information that is clear and accurate. In order for City staff and the members of the Board to understand the scope of your request, your application must have enough information to effectively communicate the nature of your appeal. At the hearing, the members of the BOA and representatives from various City departments will depend on the materials you have submitted in order to fairly evaluate your claim, and render an appropriate decision.

How the Process Works

Step 1: Applying for a variance

To qualify for a variance, an applicant has the burden of proof to demonstrate at a public hearing before the Board of Appeals the following:

1. Unnecessary hardship due to the unique physical limitations of the property and not the particular circumstances of the applicant. The unnecessary hardship must not be self-imposed by the applicant or prior owners of the property. Further, economic loss or financial hardship cannot serve as the basis for justifying a variance.
2. The variance will not create a substantial detriment to an adjacent or neighboring property, and will not be contrary to the public interest or public safety.

Step 2: Prepare your application and supporting plans and materials.

Part of the application submittal process requires that detailed information be provided regarding the nature of your appeal. This may include photos of the property, floor plans, and/or a plan of operation for a proposed use. Depending on what type of appeal you are making to the Board, different types of documents may be required. Please contact the City Clerk's Office if you have any questions about what materials are needed for your appeal. When you have prepared all of the necessary materials, return them to the City Clerk's Office, along with the \$250 application filing fee. Checks may be made payable to: The City of Mequon.

Step 3: City staff will process your application and forward it to Board of Appeals

The City Clerk's Office will review your application and it may be determined that more information is required before a recommendation can be made. If such a request for additional information is made, it is very important that you respond to it promptly. Any delay in responding to requests for additional information may result in further scheduling delays before your item can be considered before the BOA.

Once it is determined that you have submitted sufficient information to proceed to a hearing, you will be placed on the next available agenda. The BOA meets on the first Thursday of each month at 6:00 pm at City Hall, 11333 N. Cedarburg Road.

Step 4: A public hearing is held

At the public hearing, the Board will review submitted materials, staff reports, and any written letters or comments that the Board has received. The Board will take oral testimony from the applicant, City staff and any interested parties at the public hearing. As a general rule, all of the Board's hearings are open to the public and the public is invited to attend any session of the Board of Appeals.

In making its findings and determinations, the Board of Appeals may consider factors such as: characteristics of the property, including, but not limited to: relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks; existing and future use of the property; useful life of improvements at issue; disability of an occupant; aesthetics; degree of non-compliance with the requirements allowed by the variance; proximity to and character of any surrounding properties; zoning of the area in which property is located and neighboring areas; and the purpose and intent of the Zoning Code subsection imposing the requirements.

Step 5: The Board will render a verbal decision and will provide a written decision

After the hearing, a copy of the written decision will be mailed to you according to City of Mequon ordinance section 58-41(g). Any variance granted by the Board of Appeals may contain conditions that it deems necessary, including, but not limited to, conditions that:

1. Prescribe the duration of the variance to be:
 - a. Permanent, thereby remaining permanently with the property;
 - b. A specified length of time; or,
 - c. The time period during which the property is owned or occupied by a particular person.
2. Require the performance of additional actions to the mitigation or enhancement of impacts resulting from the variance.
3. Prescribe a limitation on the action effectively authorized by the variance.

If your appeal is denied by the Board, you have the right to appeal. Anyone aggrieved by a decision of the Board of Appeals has the right to appeal that decision to Circuit Court within 30 calendar days of the date of the written decision.

Note: If you have questions regarding whether going to the Board of Appeals is your best course of action, appeals to the Circuit Court, or the effect of a Board of Appeals decision, please contact legal professionals.

ALL RESPONSES MUST BE TYPED!!!

Statement of Variance (Use and Dimensional)

Please submit a statement of variance for each variance that you are requesting. **No variance can be granted unless the Board finds that all of the following facts and conditions exist.**

1. **Preservation of Intent.** A variance would not be inconsistent with the spirit, purpose and intent of the regulations for the district in which it is requested.
2. **Exceptional Circumstances.** Exceptional, extraordinary or unusual circumstances or conditions apply to the lot or intended use that do not apply generally to other properties or uses in the same district, and the variance is not of so general or recurrent nature to suggest amendment of the regulation.
3. **Preservation of Property Rights.** The variance is necessary for the preservation and enjoyment of the same substantial property rights, which are possessed by other properties in the same district and same vicinity.

4. **Absence of Detriment.** The variance will not create substantial detriment to adjacent property, and will not materially impair or be contrary to the spirit, purpose and intent of this chapter, or the public interest.

5. **Hardship Use Variance.** The alleged difficulty or hardship is not self-imposed nor is it based solely on economic grounds.

Hardship Dimensional Variance. In the case of a dimensional variance request, compliance with the code requirement from which the variance is requested would unreasonably prevent the property owner from using his or her property for a permitted purpose or would otherwise be unnecessarily burdensome.



Department of Planning and Community and Economic Development
Building Inspection Division

Website: www.cityofmadison.com

215 Martin Luther King Jr Blvd, Suite 017
P.O. Box 2984
Madison, Wisconsin 53701-2984
Phone 608 266 4551
TDD 608 266 4747

Dear Applicant:

Zoning laws govern how you can develop your property. Variances are exceptions to those laws. The Zoning Board of Appeals (ZBA) hears variance requests at its monthly meetings. Before you submit your variance application, please contact the Zoning Administrator, kbannon@cityofmadison.com, at least one week prior to the application submission deadline to schedule a pre-application meeting. At the meeting, we will discuss your project and the variance process.

In this packet, you will find the variance application and the six standards which the ZBA uses to approve or deny a variance request. To apply for a variance, you must:

1. Complete the application.
2. Submit all required materials.
3. Specifically outline how the project meets all six variance standards.

You can improve your odds of approval with a quality submission.

The ZBA consists of seven volunteer members. The Mayor appoints members, and the City Council approves them. At ZBA hearings, there are typically five members present. It takes a majority of votes to approve a variance. During the hearing, City staff will explain the details of your case to the Board. We will also show photographs taken by staff at an outside inspection of your property. The Board will then invite you to present information. You will explain how your request meets the six standards for the approval of a variance. We will send notice of your application to owners and occupants of properties within 200 feet. Any interested party will be able to speak on your variance request.

IMPORTANT –

The ZBA reviews requests using the six standards adopted by the City Council and outlined by law. You can find the variance standards on the following page of this packet. We require evidence for facts you provide in the application and in ZBA hearings.

Sincerely,

Katie Bannon, AICP
Zoning Administrator
kbannon@cityofmadison.com

Jenny Kirchgatter
Assistant Zoning Administrator
(608) 266-4429

Jacob Moskowitz
Assistant Zoning Administrator
(608) 266-4560

Attachment: Madison (10111 : Application)

Standards for Variances:

The Zoning Board of Appeals shall not grant a variance unless you show, and the Board finds, that your proposed variance meets all the following standards:

1. There are conditions unique to the property of the applicant that do not apply generally to other properties in the district.
2. The variance is not contrary to the spirit, purpose, and intent of the regulations in the zoning district and is not contrary to the public interest.
3. For an area variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.
4. The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.
5. The proposed variance shall not create substantial detriment to adjacent property.
6. The proposed variance shall be compatible with the character of the immediate neighborhood.



CITY OF MADISON ZONING BOARD OF APPEALS VARIANCE APPLICATION

\$500 Filing Fee

Type or legibly print using blue or black ink.

Address of Subject Property: _____

Name of Owner: _____

Address of Owner (if different than above): _____

Daytime Phone: _____ Evening Phone: _____

Email Address: _____

Name of Applicant (Owner's Representative): _____

Address of Applicant: _____

Daytime Phone: _____ Evening Phone: _____

Email Address: _____

Description of Requested Variance:

See reverse side for more instructions.

FOR OFFICE USE ONLY

Amount Paid: _____	Hearing Date: _____
Receipt: _____	Published Date: _____
Filing Date: _____	Appeal Number: _____
Received By: _____	GQ: _____
Parcel Number: _____	Code Section(s): _____
Zoning District: _____	_____
Alder District: _____	_____

Attachment: Madison (10111 : Application)

Standards for Variance

The Zoning Board of Appeals will only grant a variance if it finds that your proposal meets the following standards. Please explain how your variance request meets these standards.

- 1. There are conditions unique to the property of the applicant that do not apply generally to other properties in the district.

- 2. The variance is not contrary to the spirit, purpose, and intent of the regulations in the zoning district and is not contrary to the public interest.

- 3. For an area (setbacks, etc.) variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.

- 4. The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.

- 5. The proposed variance shall not create substantial detriment to adjacent property.

- 6. The proposed variance shall be compatible with the character of the immediate neighborhood.

Attachment: Madison (10111 : Application)

Application Requirements

The Zoning Board of Appeals may refer or deny applicants with incomplete applications. Note, the maximum printed size for drawings is 11” x 17.” Please provide the following information:

- Pre-application meeting with staff.** Before you submit this application, meet with the Zoning Administrator. Together, you will discuss your proposed project and submission material. Contact Zoning at least one week prior to the application submission deadline to schedule the meeting. Your application will not be accepted unless a pre-application meeting has been held.

- Site plan**, drawn to scale. We recommend a registered survey, but it is not required. On the plan, show the following:
 - Lot lines.
 - Existing and proposed structures. Include dimensions and setback distances to all property lines.
 - Approximate location of structures on properties next to variance.
 - Major landscape elements, fencing, retaining walls or other relevant site features.
 - Scale (1” = 20’ or 1’ = 30’ preferred).
 - North arrow.

- Elevations** from all directions showing existing and proposed. Show the existing structure and proposed addition(s).

- Interior floor plan of existing and proposed structure**, if required. Most additions and expansions will require floor plans.

- Front yard variance requests.** Show the front yard setback of all other properties on the same block face.

- Lakefront setback variance requests.** Provide a survey prepared by a registered land surveyor. The survey must show existing setbacks of buildings on adjacent lots.

- Variance requests involving slope, grade, or trees. Show:**
 - Approximate location and amount of slope.
 - Direction of drainage.
 - Location, species and size of trees.

- Email **digital** copies of all plans and drawings to: zoning@cityofmadison.com.

- Pay \$500 filing fee on or before submission deadline.** Payment may be made in person by appointment at the Zoning counter, by mail to City of Madison Building Inspection, P. O. Box 2984, Madison WI 53701-2984, or placed in the drop box at the Doty Street entrance to the Madison Municipal Building 215 Martin Luther King Jr. Blvd. When mailing or using the drop box, please include a note that payment is for a variance application, state the subject property address and provide your contact information.

- CHECK HERE.** I understand that as part of my variance request, City of Madison staff will need access to my property. Staff will take photographs and do a pre-hearing inspection of the property. I give City Staff permission to enter my property, inspect the property, and take photographs.

- CHECK HERE.** I acknowledge that any statements implied as fact require evidence.

Attachment: Madison (10111 : Application)

CHECK HERE. City of Madison staff has given me a copy of the standards that the Zoning Board of Appeals will use to review variance applications.

Owner's Signature: _____ **Date:** _____

------(For Office Use Only)-----

DECISION

The Board, in accordance with its findings of fact, hereby determines that the requested variance for _____ **(does) (does not)** meet all the standards for a variance. Further findings of fact are stated in the minutes of this public hearing.

The Zoning Board of Appeals: **Approved** **Denied** **Conditionally Approved**

Zoning Board of Appeals Chair: _____ **Date:** _____

Attachment: Madison (10111 : Application)

Notice of Public Hearing Signs

The City of Madison zoning ordinance requires applicants to post signs for public hearings of the Board of Zoning Appeals (ZBA) on the properties requesting a variance or appeal.

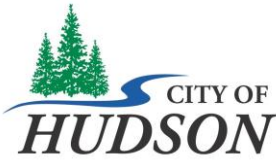
Sign Pickup

- Signs must be picked up at the Building Inspection Zoning Counter, which is open by appointment only. Schedule an appointment at: <https://www.cityofmadison.com/dpced/bi/schedule-a-counter-appointment/3423/>. The Zoning Counter is located in the Madison Municipal Building at 215 Martin Luther King, Jr. Blvd., Ste. 017, Madison, WI 53701.
- Signs will include a short description of the request, the address of the property subject to the hearing, applicant name, phone number, and email, and the date and time of the ZBA hearing. You may receive phone calls or emails regarding your request from people who see the signs.

Sign Posting

- Signs must be posted at least 21 days prior to the ZBA meeting date.
- Signs must be on the property which is the subject of the public hearing.
- If the property has frontage on more than street, a sign shall be placed facing each street.
- Signs must be posted on private property. Signs may not be in the City right-of-way, public terrace, on a public tree or on a street sign. It is recommended that the signs be placed not more than five feet behind the property line.
- Signs and the information on the signs must face the street so that they are visible to pedestrians and vehicles from the street and the public walkway.
- When there is no front yard to post signs, you may post signs on the outside of the building, in a ground floor window or glass door. Signs should not be displayed more than six feet above the ground or sidewalk. The intent is for signs to be visible to the public.
- Signs shall not be posted in a location that would obstruct the views of any traffic or entrances or exits to the property.
- Signs must be removed no more than seven days after the hearing.

If you have any questions, please call our office at 608-266-4551.



Application to:
VARIANCE/APPEAL TO THE BOARD OF APPEALS
(As per Municipal Code § 255-90 and §255-91)

3.a.b.e

505 Third Street • Hudson, WI 54016 • (715)386-4776

www.hudsonwi.gov

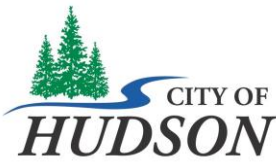
Pursuant to Wisconsin Statutes and the City of Hudson Municipal Code, the Board of Appeals has the authority to issue a variance only when the following criteria are met. **It is the responsibility of the applicant(s) to explain how the statutory standards are met. Please attach additional paper if necessary.**

Unnecessary Hardship – Describe how denial of the variance would result in unnecessary hardship to the property owner due to physical characteristics of the site.

Unique Property Limitation – Describe how the unnecessary hardship is based on conditions unique to the property and were not created by the property owner.

No Harm to Public Interests – Explain how the granting of a variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

Attachment: Hudson (10111 : Application)



Application to:
VARIANCE/APPEAL TO THE BOARD OF APPEALS
 (As per Municipal Code § 255-90 and §255-91)

505 Third Street • Hudson, WI 54016 • (715)386-4776

www.hudsonwi.gov

APPLICATION MATERIALS:

The following are to be included with the application:

- A site plan drawn to scale showing dimensions of the parcel.
- Location of existing and proposed structures with the square footage and distance from property lines.
- Applicable setbacks.
- Other supporting items may include, but is not limited to, pictures, survey, neighbors(s) comments, etc.
- Application fee (nonrefundable) of **\$500.00** for one-family residential zones and **\$750.00** for multi-family and non-residential zones per appeal request. Checks can be made payable to "City of Hudson".
- *Multiple appeal requests require separate applications and fees.*

All items submitted become City of Hudson file records.

I (WE) UNDERSTAND CITY STAFF AND/OR BOARD MEMBERS MAY INSPECT THE SITE, AND I (WE) GIVE PERMISSION TO DO SO.

Applicant Signature(s)

Property Owner Signature(s)
(if different than owner)

OFFICE USE ONLY

Appeal No. _____

Parcel No. _____

Code Chapter and Section _____

Notice Publication Date(s) _____

Application #

Receipt #

Date

Attachment: Hudson (10111 : Application)

CITY OF HUDSON
ORDINANCE NO. 7-24
AN ORDINANCE AMENDING THE MUNICIPAL CODE RELATING TO THE
BOARD OF APPEALS

Whereas, The City of Hudson Common Council wishes to adopt changes to the organization, powers and duties of the Board of Appeals to:

- 1) align the Municipal Code with Wisconsin Statutes,
- 2) to require the appointment of two alternate members,
- 3) to require vacancies on the Board to be filled,
- 4) to disclose to the Board any ex parte communications by members,
- 5) to require annual training for Board members,
- 6) to establish a quorum requirement of four members,
- 7) to retain independent legal counsel whenever necessary or advisable for the Board subject to Council approval,
- 8) to remove the supermajority requirement and allow Board action by majority vote,
- 9) update and clarify the decision criteria, and
- 10) to define terms.

Now therefore, The City of Hudson Common Council does ordain that Municipal Code sections 14-4, 255-90 and 255-91 are amended to read as follows.

§ 14-4 Board of Appeals.

- A. The Board of Appeals shall consist of five members appointed by the Mayor, subject to confirmation of the Council, for terms of three years, with the terms so staggered that no more than two members are appointed each year.
- B. The Mayor shall appoint, for a term of three years, two alternate members of such Board who shall act with power only when a member of the Board refuses to vote because of interest or when a member is absent.

§ 255-90 Creation; organization; powers and duties.

- A. Creation and membership. A Board of Appeals shall be appointed pursuant to W.S.A. s. 62.23. The Board of Appeals shall consist of five members appointed by the Mayor subject to confirmation by the Common Council. The members of the Board shall serve at such compensation as is fixed by the Common Council and shall be removable by the Mayor for cause upon written charges only after public hearing. The Mayor shall designate one of the members Chair. The Board may

Attachment: Hudson (10111 : Application)

appoint a secretary and other employees.

- (1) Vacancies. Vacancies shall be filled for the unexpired terms of members and alternates whose terms become vacant.
- (2) Alternate Members. The Mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such Board, in addition to the 5 members above provided for. Annually, the Mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent.
- (3) Ex Parte Communications. The members and alternate members of the Board of Appeals shall be strongly discouraged against having any communication regarding a variance, appeal or conditional use before the board or which may come before the board except during a noticed meeting or hearing. If a member is not able to avoid ex parte communication, the member shall disclose such communication to the Board and be part of the record.
- (4) Training. The members and alternate members of the Board of Appeals shall be required to annually complete at least 2 hours of training on the roles, duties and responsibilities of members, similar to the training workshops provided by the University of Wisconsin-Stevens Point Center for Land Use Education. Members participating in training shall be reimbursed for expenses incurred for training, travel, meals, and other compensation as determined by the Common Council.

B. Meeting and rules. All meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. A quorum of the Board shall consist of four members or acting members. All hearings conducted by the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or indicating the fact of absence or failure to vote, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall adopt its own rules of procedure not in conflict with this chapter or the applicable Wisconsin statutes. When deemed necessary or advisable, the Board may retain legal counsel, separate and apart from the City Attorney, subject to any policies adopted by the Common Council for

preapproval based upon Council budgetary considerations.

- C. Offices. The Common Council shall provide suitable offices for holding hearings and presenting records, documents and accounts.
- D. Appropriations. The Common Council shall appropriate funds to carry out the duties of the Board, and the Board shall have the authority to spend, under regular procedure, all sums appropriated to it for the purpose and activities authorized herein.
- E. Jurisdiction and authority. The Board of Appeals shall have the following jurisdiction and authority:
- (1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Building Inspector and Planner/Zoning Administrator.
 - (2) To hear and decide special exceptions to the terms of this chapter upon which the Board of Appeals is required to pass.
 - (3) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions peculiar to a specific property, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. Except as specifically provided, no action of the Board of Appeals shall have the effect of permitting in any district uses prohibited in such district. Where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists, and the records of the Board shall clearly show in what particular and specific respect an unnecessary hardship or practical difficulty is created.
 - (4) The Board of Appeals may reverse or affirm wholly or in part or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the Building Inspector and Planner/Zoning Administrator. The concurring vote of four members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination appealed from or to decide in favor of the applicant on any matter on which it is required to pass or to effect any

variation in the requirements of this chapter.

(5) In addition to the foregoing, the Board of Appeals shall have the following specific powers:

- a. To interpret the provisions of this chapter to carry out the intent and purpose of the plan as shown on the district map made a part of this chapter where the street layout actually on the ground varies from the street layout on the aforesaid map.
 - b. To call on any other City department for assistance in the performance of its duties. Such other departments shall render such assistance as may be reasonably required.
- F. Decisions of the Board. If a quorum is present, the Board of Appeals may take action by a majority vote of the members present to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass under the provisions of this chapter or to approve a variance from this chapter. The grounds of every such determination shall be stated in writing.
- G. Scope of appeals. Appeals to the Board may be made by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision made by an administrative official in the enforcement of this chapter. Such appeal shall be made within 60 days of the alleged grievance or judgment in question.
- H. Hearings of appeals. The Board shall fix a time, not more than 60 days from the date of filing, for the hearing of an appeal and shall give due notice thereof to all parties involved. The Board or any of its officers it may designate shall cause such hearings to be published in a newspaper of general circulation in the City.

§ 255-91 Variances.

A. Purpose. The Board of Appeals may vary the regulations of this chapter in harmony with its general purpose and intent, but only in specific instances where the Board makes a finding of fact based on the standards prescribed in Subsection E.

Variances may be granted:

- (1) To permit any yard of less dimension than that required by this chapter.
- (2) To permit the use of a lot prohibited solely because of insufficient area of the lot.

- (3) To permit construction of a building, structure or sign which will exceed the dimensional limit(s) for the district in which it is to be built.
 - (4) To permit off-street parking which does not conform in quantity or other particulars to the requirements of this chapter.
- B. Application for variance. The application for a variance shall be filed with the Planner/Zoning Administrator.
- (1) The application shall contain the following information:
 - a) Name and address of the applicant.
 - b) Statement that the applicant is the owner or the authorized agent of the owner of the property.
 - c) Address and description of the property.
 - d) An accurate drawing of the site and surrounding area for a distance of at least 100 feet from each boundary with the proposed variance shown on the drawing.
 - (2) The application shall be accompanied by a filing fee as established by the Common Council.
- C. Hearing of application. The Board of Appeals shall conduct at least one public hearing on the proposed variance. Notice of such hearing shall be given not more than 30 days and not less than 10 days before the hearing in a newspaper of general circulation in the City.
- D. Disposition by Board of Appeals. The Board of Appeals shall make an affirmative or negative decision within 30 days after the public hearing. If a quorum is present, the Board of Appeals may take action by a majority vote of the members present. A copy of the variance shall be supplied to the Planner/Zoning Administrator within 10 days of passage, and it shall be accompanied by a written finding of fact and reasons for granting the variance.
- E. Standards. For the Board of Appeals to make an affirmative decision it must find that:

- (1) Unnecessary Hardship. Denial of the variance would result in unnecessary hardship to the property owner due to physical characteristics of the site.
- (2) Unique Property Limitations. The unnecessary hardship is based on conditions unique to the property and were not created by the property owner.
- (3) No Harm to Public Interests. The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

- F. Burden of Proof. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
- G. 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.
- H. Uniqueness of the property. Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the Board of Appeals may not grant a variance to relieve it.

Effective Date. This Ordinance shall be effective upon adoption and publication as required by law.

[ADOPTION DATE AND SIGNATURES ON NEXT PAGE]

First Reading: August 19, 2024

Passed and Adopted: September 3, 2024

APPROVED:



Rich O'Connor, Mayor

ATTESTED:



Becky Eggen, City Clerk

Attachment: Hudson (10111 : Application)

Village of Summit
Shoreland Zoning Division
37100 Delafield Road Summit WI 53066 262 567 2757

VARIANCES AND APPEALS TO THE VILLAGE OF SUMMIT BOARD OF ZONING APPEALS

Fee Paid: \$ _____ Receipt No.: _____ BOA File No: _____

Office Use Only:
Zoning and Shoreland Protection Ordinance Section _____ Zoning District (s) _____
Application is hereby made for a Variance and/or Appeal from the following section(s):
Road Setback _____ Offset _____ Shore Setback _____ Wetland Setback _____ Conservancy Setback _____
Impervious Surface _____ Min. Floor Area _____ Bldg. Height _____ Other _____

Address of Subject Property _____ Tax Key No. _____

Owner/Applicant Mailing Address City State Zip Daytime Phone No.

Agent (if different from above) Mailing Address City State Zip Daytime Phone No.

_____ Email address and/or fax number so we can forward a copy of the final staff report to you prior to meeting

Please list the type of project(s) and approximate date(s) of any previous variances or zoning permits on this property if known:

Describe in detail the proposed construction and use:

Section 59.694(7)(c) of the 2003-2004 Wisconsin State Statutes and Wisconsin case law (*Ziervogel-McGinnity v. Washington County, Snyder v. Waukesha County*) requires the petitioner to demonstrate that their request for a variance meets the following three tests:

- 1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonable prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.
- 2. There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.
- 3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.

Please explain how your variance request meets the above three tests for a variance, what special circumstances are unique to your property and which justify, in your opinion, favorable action by the Board of Adjustment (attach additional sheets if necessary):

Attachment: Summit (10111 : Application)

Variance Application

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the zoning board of adjustment/appeals. The zoning board is a quasi-judicial body because it functions almost like a court. The board's job is not to compromise ordinance provisions for a property owner's convenience but to apply legal criteria provided in state laws, court decisions and the local ordinance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

Process

At the time of application you will be asked to:

1. **Complete an application** form and submit a \$300 fee;
2. **Provide detailed plans** describing your lot and project (location, dimensions and materials);
3. **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance (Three Step Test in Part 2); and
4. **Stake out lot corners or lines**, the proposed building footprint and all other features of your property related to your request so that the zoning board may inspect the site.

Following these steps, the Zoning Administrator 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 before the zoning board. The burden will be on you as property owner 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 hearing. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and must then deny your application.

Variance Application

City of Dodgeville Zoning Board of Appeals

Part 1: General information and alternatives analysis

To be completed jointly by the applicant and zoning staff.

Petition # _____ Date filed _____ \$ 400 fee paid (payable to City of Dodgeville)

	Owner/agent	Contractor
Name		
Address		
Phone		
Email		

Legal description: ___ 1/4, ___ 1/4, S ___, T ___ N, R ___ E

City/Village/Town of _____

Address _____ Tax parcel number _____

Lot area & dimensions: _____ sq. ft., _____ x _____ ft.

Zoning district _____

Current use & improvements:

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

Description and location of all nonconforming structures & uses on the property:

Ordinance standard from which variance is being sought (section number and text):

Describe the variance requested:

Type of variance requested:

_____ **use variance** – **Use variances are not granted.**

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

Attachment: Dodgeville (10111 : Application)

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

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 you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reasons you rejected them.

Part 2: Three-Step Test

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

1) Unique property limitations *(To be completed by the applicant)*

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with 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. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

Do unique physical characteristics of your property prevent compliance with the ordinance?

- Yes. Where are they located on your property? Please show the boundaries of these features on the site map that you used to describe alternatives you considered.
- No. A variance cannot be granted.

2) No Harm to Public Interests *(To be completed by zoning staff)*

A variance may not be granted which results in harm to public interests. In applying this test, the zoning board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- *Public health, safety and welfare*
- *Water quality*
- *Fish and wildlife habitat*
- *Natural scenic beauty*
- *Minimization of property damages*
- *Provision of efficient public facilities and utilities*
- *Achievement of eventual compliance for nonconforming uses, structures and lots*
- *Any other public interest issues*

Ordinance purpose:

Purpose(s) of standard from which variance is requested:

Attachment: Dodgeville (10111 : Application)

Analysis of impacts

Discuss impacts that would result if the variance was granted. For each impact, describe potential mitigation measures and the extent to which they reduce project impact (completely, somewhat, or minor). Mitigation measures must address each impact with reasonable assurance that it will be reduced to an insignificant level in the short term, long term and cumulatively.

Short term impacts: (through the completion of construction)

Impact 1:	Impact 2:
Mitigation 1:	Mitigation 2:
Extent to which mitigation reduces project impact	Extent to which mitigation reduces project impact:

Long term impacts: (after construction is completed)

Impact 1:	Impact 2:
Mitigation 1:	Mitigation 2:
Extent to which mitigation reduces project impact:	Extent to which mitigation reduces project impact:

Cumulative impacts: (What would happen if a similar variance request was granted for many properties?)

Impact 1:

Mitigation 1:

Extent to which mitigation reduces project impact:

Impact 2:

Mitigation 2:

Extent to which mitigation reduces project impact:

Will granting the variance harm the public interest?

- Yes. A variance cannot be granted.
- No. Mitigation measures described above will be implemented to protect the public interest.

Attachment: Dodgeville (10111 : Application)

3) Unnecessary hardship *(To be completed by the applicant)*

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). 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.

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.¹ The Wisconsin Supreme Court also determined that living without a lakeside porch was a personal inconvenience and did not constitute unnecessary hardship.² The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.

Is unnecessary hardship present?

Yes.

Describe:

No. A variance cannot be granted

¹ *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

² *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

Part 3: Construction Plans

To be completed and submitted by the applicant.

Attach construction plans detailing:

- Property lines
- Vegetation removal proposed
- Contour lines (2 ft. interval)
- Floodplain & wetland boundaries
- Dimensions, locations & setbacks of existing & proposed structures
- Utilities, roadways & easements
- Location & extent of filling/grading
- Location & type of erosion control measures
- Any other construction related to your request
- Anticipated project start date

I certify that the information I have provided in this application is true and accurate.

Signed: (applicant/agent/owner) _____

Date: _____

Remit to: Building Inspector
100 E Fountain St. Dodgeville, WI 53533
buildinginspector@dodgevillewi.gov

Attachment: Dodgeville (10111 : Application)

Village of Twin Lakes



BOARD OF APPEALS VARIANCE PACKET

Attachment: Twin Lakes (10111 : Application)

108 E MAIN ST
PO BOX 1024
TWIN LAKES WI 53181
(262) 877-2858
(262) 877-4019 - FAX

VARIANCES

Purpose and Nature:

Because those who draft a Zoning Ordinance cannot anticipate every land use question that will arise in a community, there needs to be some mechanism to give the Ordinance flexibility. The Board of Appeals authority to grant Variances serves this purpose. A *Variance* is a **permission granted by the Board to build or develop in a way that is inconsistent with the dimensional standards contained in the Zoning Ordinances.**

The Variance procedure allows the dimensional standards in an Ordinance to be varied in response to unusual circumstances, which constitute Unnecessary Hardship. A property owner who has been denied a building or development permit, and believes that special conditions unique to the property will cause unnecessary hardship if a Variance is not granted, may request a Variance. The petition for a Variance must be heard by a Board of Appeals at a Public Hearing.

In deciding a Variance request, the Board of Appeals acts as an **agent of the local government, not the property owner.** It is the Board of Appeals' duty to preserve the Zoning Ordinance without modification as far as possible, while ensuring substantial justice for the property owner.

A Variance is **not** a convenience to the property owner. A Variance may **not** be granted for reasons common to other properties. The appropriate remedy in such circumstance would be to amend the Zoning Ordinance; however, amendments to the Zoning Ordinances are only made in exceptional circumstances.

A Variance for a use that is not permitted by the Ordinance (a *use Variance*) would alter the legislative intent of the Ordinance. **The Board cannot grant use Variances.** A change in use requires a zoning map or text amendment. (See Snyder v. Waukesha County Zoning Board, 74 Wis. 2d 468 (1976)). If a change in use is necessary to make feasible use of the land, the applicant must file a petition for zoning amendment. (See State ex rel. Markdale Corp. v. Board of Appeals, 27 Wis. 2d 154 (1965)). Use Variances are specifically prohibited in floodplain and shore land districts established under Sections 62.231 and 87.30, of the Wisconsin Statutes and Sections NR 115.05(6)(e) and NR 116.21(4)(c), (e) and (f) of the Wisconsin Administrative Code.

Variance Standards

Variances are not to be granted routinely. The Board of Appeals may grant a Variance only if the applicant can show that the standard set forth in the Wisconsin Statutes and interpretive case law for granting a Variance will be met. The standards provide that a Variance may be allowed when it:

Will not be contrary to the public interests; where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance will be observed, public safety In addition, welfare secured, and substantial justice done. (Section 62.23(7) (e) 7, Wisconsin Statutes).

Simply stated, the Board of Appeals will look to see whether the appeal present the existence of an **Unnecessary Hardship**, the presence of a **Unique Property Limitation**, and the **Protection of the Public Interest**. Additional court established principles also apply as follows:

1. **Unnecessary Hardship.** The Wisconsin Statutes do not define what constitutes "unnecessary hardship". It has been held that unnecessary hardship is a matter to be determined from the facts and circumstances of each individual appeal. In applying the statutory standards, the Board must abide by the following court established principles:

a. **Unnecessary hardship has been determined to be present only when an applicant has demonstrated that he or she will have no reasonable use of the property in the absence of a Variance.** (See State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396 (1998)). The Board of Appeals focus, when considering a Variance request, is on the purpose of the Zoning Regulation, rather than the burden of the regulation upon the applicant. (See State ex. rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99 (Ct App. 1998)). A Variance is not warranted if the physical character of the property allows a landowner to build or develop in compliance with a Zoning Ordinance. (See State ex. rel. Markdale Corp. v. Board of Appeals, above; Just v. Marinette County 56 Wis. 2d 7 (1972); Buhler v. Racine County, 33 Wis. 2d 137, 146 N.W. 2d 403 (1966)). In order to meeting the unnecessary hardship test, the property owner must present evidence demonstrating that no other design could satisfy the requirements of the Ordinance in question. (See State v. Kenosha County Board of Adjustment, above; State ex. rel. Spinner v. Kenosha County Board of Adjustment, above).

b. **The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of other parcels, not one that affects all parcels similarly.** Hardship arises because of some *unique property limitation* (see 2, below) of a parcel, or because the property was created before the passage of the Zoning Ordinance. If either circumstance renders the parcel unsuitable for any permitted use, or will not accommodate a structure of reasonable design for any use permitted under the existing Ordinance-if all area, yard, and setback requirements are observed-the parcel may qualify for a hardship. (See Thalhofer v. Patri, 240 Wis 404 (1942)). If the property has a reasonable use of his or her property without the Variance, the Variance request should be denied. (See State v. Kenosha County Board of Adjustment, above).

c. **Loss of profit or pecuniary (financial) hardship is not in and of itself grounds for a Variance.** (See Snyder v. Waukesha County Zoning Board, above). The proper test is not whether a Variance would maximize the economic value of the property, but whether a feasible use is possible without the Variance. (See State v. Winnebago County, 196 Wis. 2d 836 (Ct. App. 1995)).

d. **Self-imposed hardship is not grounds for a Variance.** Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, deed restrictions imposed by the owner's predecessor in title, and improvements that were made in violation of the Ordinance are generally considered *self-imposed hardships*. (See State ex. rel. Markdale Corp. v. Board of Appeals, above).

e. **The hardship cannot be one that would have existed in the absence of a Zoning Ordinance.** Sometimes, a legitimate hardship results from the interaction of the provisions of the zoning Ordinance with other actions or regulations adopted by public authorities. (See Thalhofer v. Patri, in (a) above).

2. **Unique Property Limitation.** **Unique physical characteristics of the property, not the desires of or conditions personal to the applicant**, must prevent the applicant from developing in compliance with the zoning Ordinance. (See Snyder V. Waukesha County Zoning Board, above). These features may be a wetland, soil type, parcel shape or a steep slope that limits the reasonable use of the property.

3. **Protection of the Public Interest.** Granting of a Variance must neither harm the public interest nor undermine the purposes of the Ordinance. The board's actions should be consistent with the objective stated in their local Ordinance, which, such as in the case of a floodplain or shore land Ordinance, has been adopted to meet minimum state statutory requirements. (See State V. Ozaukee County Board of Adjustment, 152 Wis. 2d 552 (Ct. App. 1989)). The public interest includes the interests of the public at large, not just that of the nearby property owners. Lack of public opposition does not in itself mean that a Variance will not harm the public interest. (See State v. Kenosha County Board of Adjustment, above).

a. In granting Variances, as in granting special exceptions (conditional uses), the Board may impose special conditions to ensure that the public welfare will not be damaged. The power of the Board to attach conditions to a Variance, to protect adjoining property and to preserve the essential character of the neighborhood, is well established, but the power is not unlimited. **The conditions must relate reasonably to the purpose and intent established in the zoning Ordinance.** (See Anderson, American Law of Zoning 3d, (1986) Vol 3, ss. 20.70 and 20.71, pp. 587-95).

b. A Variance should include only the *minimum relief* necessary to allow reasonable use of a property. (See Anderson, American Law of Zoning 3d, (1986) Vol. 3, s. 20.86, pp 624-5).

4. **Additional Court-Established Principles**

a. **Violations by or Variances granted to neighboring owners do not justify a Variance.** (See Von Elm v. Board of Appeals, 258 App. Div. 989 (N.Y. 1940)).

b. **Variance attach to the property as a permanent right.** Once a Variance is granted, it is permanently attached to the property. A new owner of the property may make use of a Variance that was granted to the previous owner if all of the conditions that are attached to the Variance are met. (See Goldberg v. City of Milwaukee Bd. of Zoning App., 115 Wis. 2d 517, 340 N.W. 2d 458 (Ct. App. 1983)).

Attachment: Twin Lakes (10111 : Application)

HOW TO FILE A VARIANCE REQUEST TO THE BOARD OF APPEALS

Any person feeling himself aggrieved by any order or ruling of the Building Inspector, may appeal from such ruling to the Board of Appeals within twenty (20) days after written notice of such ruling shall have been delivered to him. Such appeal is to be in writing, setting forth the order appealed from, and the respects in which said person, feeling himself aggrieved, claims that said order or ruling is erroneous or illegal. Said Notice of Appeal shall be filed with the Clerk/Treasurer, who shall thereupon notify the Building Inspector of said appeal, and the appeal shall be heard at the next meeting of the Board of Appeals. The Board of Appeals, after consideration thereof, shall affirm, reverse or modify said ruling as is just in the premises. The ruling or order of the inspection shall be enforced until changed by said Board of Appeals. (14.12.280 Part of Ord. passed 10/3/73: prior Code § 30.11 (4)).

If the property owner wishes to appeal any decision made by the Building Inspector, or Administrative Zoning Official, whether it be a denial of a Building Permit or the determination of a Zoning Violation, the property owner can make application for a Public Hearing before the Board of Appeals.

If a matter before the Plan Commission does not comply with the Village of Twin Lakes Municipal Code, the Plan Commission may make a positive, negative, or no recommendation to the Village Board. Any Variance request denied by the Village Board may then be brought before the Board of Appeals.

REQUIREMENTS -No Variance request will be considered without the following:

1. Written notice filed within twenty (20) days with the Village Clerk/Treasurer following the final decision of the Building Inspector or other entity, specifying the grounds setting forth the order being appealed and the respects in which said person feels himself aggrieved and outlining any claims that said order to ruling is erroneous or illegal.
2. \$900.00 fee together with the completed Board of Appeals Request Form. (See sheet titled "Average Costs" located in the Variance packet).
3. A separate \$26.00 deposit for sign to be posted on the property. The applicant must post sign not less than fourteen (14) days prior to the Public Hearing. Sign placement instructions are included on the Affidavit of Posting form in the Variance packet. The Affidavit of Posting form must be turned to the Village Clerk/Treasurer after posting.

NOTE: Signs posted must be returned within ten (10) days after the Public Hearing date or deposit will be forfeited.
DO NOT DROP OFF SIGN! The RETURN OF POSTED SIGN RECEIPT must be issued by the Board of Appeals Clerk

4. Continuance Fee - If the applicant requires a continuance, an additional fee of \$185.00 will be charged to cover meeting costs. The applicant will be invoiced \$185.00 later.
5. All information to substantiate each case is requested at the time of filing, such as Unnecessary Hardship, Unique Property Limitations and, Protection of the Public Interest. Any information substantiating the appeal request could be helpful, such as letters from neighbors in support of the Variance.
6. Items needed to file the Variance request:

- A. A written notice from the Building Inspector or Administrative Zoning Official, stating his decision regarding the specific matter at hand.
- B. Completed forms from Variance Packet:
 - 1. Request Form
 - 2. Affidavit of Posting - returned upon the posting of the sign.
- C. Current survey of the property.
- D. Complete metes and bounds legal description of property in question.
- E. Furnish 8 1/2" x 11" plans (include elevation views when possible), together with a sketch of how the proposed request sets on the parcel.
- F. Completion date of construction or completion of project.

INFORMATION

- 1. All meetings will be held within 30 to 45 days after time of filing and held on Wednesdays at 6:30 p.m. as the Village calendar permits. Counsel may accompany you if you wish.
- 2. Property owners within 200 feet of the aggrieved will be notified regarding the Variance Request by regular mail. An Affidavit of Mailing will be on file. Not less than 14 days; no more than 30 days prior to the hearing - the Village Clerk/Treasurer will make notification.
- 3. Class II publication is required. Minimum of three (3) weeks is required for publication and scheduling of hearing. Past practices puts it closer to four weeks. Publication will be done by the Village Clerk/Treasurer.

Reference: Village of Twin Lakes Ordinance 14.12.280 & 17.40.040
 Other Appeal Cases: 17.37.010

COSTS TO HOLD A BOARD OF APPEALS MEETING

ITEM	COST
Board Appearance	\$125.00
Staff Regular	\$275.00
Staff Overtime	\$65.00
Attorney	\$300.00
Publication	\$85.00
Recording Fee	\$50.00
TOTAL COST	\$900.00

Attachment: Twin Lakes (10111 : Application)

APPLICATION TO THE BOARD OF APPEALS VILLAGE OF TWIN LAKES, WISCONSIN



General Information (please type or print clearly)

	Applicant/Agent	Owner
Name		
Address		
Phone		
Fax		

Type of Request: Variance from Code Requirements
 Appeal of Administrative Decision

Property Information (Attach additional sheets if necessary)

Address of Property in Question, Twin Lakes, WI

Legal Description: _____

Current Use and Improvements: _____

Proposed Use and Improvements: _____

Dimensions:	Required	Requested
Street Yard	ft.	ft.
Left Side Yard	ft.	ft.
Right Side Yard	ft.	ft.
Rear Yard	ft.	ft.
Area	sq. ft.	sq. ft.
Other		

Is this a corner lot? ____ YES ____ NO

Zoning District: _____

Code Reference (Section No.): _____

Attachment: Twin Lakes (10111 : Application)

OFFICE USE ONLY

Date Application Filed: _____ File Number: _____
Board of Appeals Action & Date: _____ Fee Paid/Receipt #: **\$900.00**
Conditions: _____

Justification for the Request (Attach additional sheets if necessary)

APPEAL OF AN ADMINISTRATIVE DECISION: Provide a description of your appeal.

Village Official(s) who made the decision you are appealing: _____

Decision of official(s): _____

Describe your appeal: _____

VARIANCE: State in the spaces below how your variance request conforms to the Three Standards Test as described in the attached Q&A document. Attach a separate sheet if necessary.

1) Unnecessary Hardship is present because... _____

2) The hardship is due to unique features of the property in that... _____

3) The variance will not be contrary to the public interest because... _____

Signatures

The undersigned person(s) hereby give notice to the Village of Twin Lakes Board of Zoning Appeals, of an appeal and/or request for a variance and grant permission to inspect the property.

APPELLANT: _____ DATE: _____

APPELLANT: _____ DATE: _____

Attachment: Twin Lakes (10111 : Application)

VILLAGE OF TWIN LAKES
BOARD OF APPEALS
TWIN LAKES WISCONSIN

AFFIDAVIT OF POSTING

I _____, state that I am the aggrieved Applicant in the matter to be heard
Print Name

Before the Board of Appeals of the Village of Twin Lakes, on Wednesday the _____ day of _____, 20 _____, at 6:30 PM. That I have complied with the posting requirements of the Village of Twin Lakes Zoning Ordinance by placing the customary Notice of Public Hearing Sign on the subject property as close to the road as possible for all to see. If the subject property is located on a corner lot, the sign is visible from either road access.

Location of posting: _____

Applicant acknowledges that returning of the Public Hearing Sign must be within 10 days after the Hearing or Applicant forfeits deposit.

Under penalties of perjury as provided by law, the undersigned declares that the statements set forth in the Affidavit of Posting are true and correct.

Posting was made on the _____ day of _____, 20 _____

Attachment: Twin Lakes (10111 : Application)

VILLAGE OF TWIN LAKES
BOARD OF APPEALS
TWIN LAKES WI 53181

RETURN OF POSTED SIGN

RECEIPT

DATE: _____

RECEIVED FROM _____
(Print Name)

Receipt of Board of Appeals posting sign. Sign was returned on the above date.

The condition of the returned posted sign:

Good Fair Bad

(Signature or person returning the sign)

Comments: _____

Return of Deposit: _____
Date

Board of Appeals Clerk

Attachment: Twin Lakes (10111 : Application)

BOARD OF ZONING APPEALS

Appeal No. _____
Date Filed _____
Date of Notice _____

Appeal for variance

(Please check one) **Single family/owner occupied:** _____
Rental/+ all others: _____

TO BE COMPLETED BY THE APPELLANT:

Appellant: _____ Address _____ Phone _____
Owner: _____ Address _____ Phone _____
Location of property: _____
Street and number Addition - Lot and block

This appeal is for a variance to allow _____

It is your responsibility to prove to the Board of Zoning Appeals that your appeal should be granted on the basis of how it applies to the four requirements given below. Please be specific. If you need additional space, you may use another sheet of paper.

Are there unique circumstances (such as topographical problems) about the land itself or special conditions applicable to your property or to the intended use that do not apply generally to the other property in the same vicinity and zoning district?

Strict application of the zoning ordinance would constitute unnecessary hardship or practical difficulty to you because

The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity, but which is denied to your property because _____

The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity or zone in which your property is located because _____

Other reasons that you may have which are similar to those above _____

I hereby certify that the above statements and plans submitted herewith are true to the best of my knowledge.

Date: _____

Signature of applicant

Plot plan must be submitted with the application.

Variance – Single family/owner occupied - \$100.00

Variance – Rental / + all others - \$200

Variance + Conditional Use - \$250

Conditional Use - \$250

Special Hearing - +\$50

Email address of applicant

Receipt number: _____ Amount paid: _____

Attachment: BOZ Appeal for Variance Application (PDF) (10111 : Application)