



Zoning & Planning Board of Appeals Appealing for a Variance

Department of Community
and Economic Development
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General Directives

Typically, variances are requested when development of property is inconsistent with zoning codes. The Zoning & Planning Board of Appeals has the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the city's zoning code. By state law (s. 62.23(7)(e)7., Wis. Stats.), the Board of Appeals is given specific powers and responsibilities to hear these alleged errors.

The board has the power to grant variances when special conditions unique to a property will not allow the property owner to meet the dimensional standards of the ordinance. To be granted a variance, the property owner must show **unnecessary hardship** is caused by the ordinance. The board must uphold the intent of the zoning ordinance and deliver substantial justice through its decision.

Hearing Dates & Filing Deadlines

The Board of Appeals meets the third Monday of each month starting at 5:30 p.m. in City Hall, Rm 604, 100 N Jefferson Street. For an appeal to be heard at any monthly hearing, an application must be on file in the inspection office, City Hall, Rm 610, 100 N Jefferson Street by 12:00 PM of the first Tuesday of the month. The applicant must submit a completed application, drawings, information, and non-refundable fee (\$75 for Residential and \$150 for Commercial) with staff by the deadline to assure being placed on the agenda.

Application Requirements

An application shall be made on forms approved by the Board and furnished from the Community and Economic Development Department. Applications must be accompanied by a site plan drawing, (no larger than 11 x 17 and drawn to scale) showing the location and size of the affected property, abutting properties and public right-of-ways. Drawings must include existing improvements and proposed changes to be implemented; as well as, illustrating those items which require a variance. The applicant may provide additional information which is necessary to explain the application to the board members. Failure to provide a completed application may be grounds for denial of the variance.

Postponing & Withdrawing Applications

If necessary, an applicant may postpone the hearing of an appeal provided it is received by staff in writing prior to the hearing. The appeal will be postponed for one month or at a future meeting agreed upon by the Board. No appeal will be postponed beyond that specified date. An application for appeal may be withdrawn provided it is received by staff in writing prior to the hearing date.

Appeal Hearing Rules

Each applicant (or a representative of the applicant) is required to attend the hearing or the appeal may be denied by the Board. In granting variances, the Board may impose special conditions to ensure that public interest and welfare will not be threatened. Variances granted by the Board remain valid for one year from the hearing date or as stipulated in the decision. If work to implement the variance has not begun within that time, the variance shall expire requiring the Board to re-approve the variance should the applicant wish to implement the plan. No application which has been denied by the Board shall be reconsidered without material alteration or revision within one year of the Board's decision, except pursuant to a court order or motion to reconsider made by a member voting with the majority. The Board may refuse to act upon an appeal if the applicant has failed to implement previously granted appeals.

Burden of Proof

To qualify for a variance, an applicant must demonstrate that all three statutory standards will be met. These standards include the existence of **unnecessary hardship**, the presence of **unique property limitations** and the **protection of public interest** will be maintained.

1. **Unnecessary Hardship.** A matter to be determined from the facts and circumstances of each individual appeal, including:
 - A. Unnecessary hardship is situation where, in the absence of a variance, an owner can make no feasible use of a property or strict conformity is unnecessarily burdensome. *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.*
 - B. Hardship must be peculiar to the parcel in question and different from that of other parcels. Hardship arises because of some unique property limitation of a parcel, or because the property was created before the passage of the zoning ordinance.
 - C. Self-imposed hardship is not grounds for a variance. Improvements that were made in violation of the ordinance are generally considered to be self-imposed hardships.
 - D. Hardships cannot be one that would have existed in the absence of a zoning code.
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. 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 purpose of the ordinance. The public interest includes the interest of the public at large, not just that of nearby property owners. Lack of local opposition does not in itself mean that a variance will not harm public interest Property owners within 100 ft. of the property area and Alderpersons will be noticed of the request prior to the meeting.