VARIANCE REQUEST STANDARDS

What is a variance? A variance is a request for a relaxation of a dimensional standard of a zoning code. Zoning ordinances were never meant to address the individual characteristics of specific parcels of land, rather are designed to apply broadly as they separate commercial from residential properties, protect water quality and habitat with specified lot size, setback and frontage requirements, and generally impose restrictions calculated to bring order to the community. Wisconsin’s zoning enabling laws authorize the County Board of Adjustment to relax the terms of an ordinance and offer relief when justified by a property’s unique conditions or character, and specifically when certain criteria established by statute and case law have been met. This flexibility can offer relief to a sometimes rigid zoning code. However, when considering a variance request, the Board of Adjustments can only grant relief when three specific standards exist, as outlined below. Take time to read and review this information, and then summarize why your property meets these requirements. Failure to provide these three standards will result in denial of the request. If you have additional questions regarding the standards, please feel free to ask question or consult an attorney. The Zoning Office Staff is available to assist you and provide some limited information, but is not able to provide legal advice.

1. UNNECESSARY HARDSHIP… is a situation where compliance with the strict letter of the restrictions governing the area, setback, frontend, height, bulk or density would unreasonably prevent the applicant from using the property for a permitted purpose or necessity to conform to such restrictions would be unnecessarily burdensome. The hardship must be peculiar to the parcel, such as a narrow or step lot or other physical limitations. Convenience, loss of profit, financial or self-created hardships are not grounds for granting a variance. An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, because of conditions which are self-imposed or created by a prior owner (for example, excavating a point on a vacant lot and then arguing that there is no suitable location for a home). Courts have 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.

2. UNIQUE PROPERTY LIMITATIONS… Unique physical limitations of the property such as steep slopes or presence of wetlands that are not generally shared by other properties in the area must prevent compliance with the requirements of the code. Unique limitations of the lot must exist, and not the desires or limitations of the applicant to develop the lot. The circumstances of the applicant such as a growing family or perceived need for a larger garage, as an example, are not factors in deciding variances.

3. PROTECTION OF THE PUBLIC INTEREST… Granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. The public interest includes the interest of the public at large, not just neighboring property owners. Once it has been shown that the property owner would be burdened unnecessarily by conforming with the current restrictions when attempting to utilize the property for a permitted use, the zoning standards will only be relaxed to the extent necessary to provide reasonable use without harming the public interest. The Board must take into consideration all of the following: the purpose of the zoning restriction in the first place, the restrictions effect on the property in questions, the short and long term effects a variance will have on the neighborhood, the broader community, and on the public’s interests, and the cumulative effects it may have if other similar variances are approved in the future (i.e. will the granting of a variance in this situation set a precedent).