

Village of Twin Lakes



BOARD OF APPEALS VARIANCE PACKET

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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)).

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/her 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

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.): _____

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: _____

**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 _____

**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