

## Legal Standards for Variances

As an potential applicant for a variance, you need to be aware of the legal standards under which variance applications are to be evaluated by the Board of Adjustment. Wisconsin courts have stated that variances are not to be granted routinely. To do so would defeat the purpose of having a zoning ordinance. The courts have also stated that it is the burden of the applicant to show that their application meets the required standards.

The Planning and Zoning Department staff have been directed to submit to the Board of Adjustment an evaluation of all variance requests under the legal standards established by the courts. In order to justify the granting of a variance, the applicant must show that *an unnecessary hardship* exists, that there is a *unique property limitation*, and that *the variance would not be contrary to the public interest*.

The following points are all drawn from Wisconsin case law, and are the standards under which a variance action would be reviewed by the courts:

**Unnecessary Hardship.** What constitutes a hardship is to be determined from the facts and circumstances of each individual case. The Board must consider the following court-established principles:

1. Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome. In most cases, if a property already is developed and has an established use, a hardship will not exist.
2. The hardship must be peculiar to the zoning parcel in question and different from other parcels, not one which affects all parcels similarly.
3. Loss of profit or financial hardship is not in and of itself grounds for a variance. The fact that developing in compliance with ordinance requirements may cost considerably more does not constitute a hardship.
4. Self-imposed hardship is not grounds for a variance. When conditions giving rise to the need for a variance were created by the property owner or a former owner, the hardship is self-imposed.

**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. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of the property.

**Protection of the Public Interest.** Granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public welfare will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only the *minimum relief* necessary to allow reasonable use of property.

Several recent Wisconsin cases (neither of which originated in Columbia County) clearly illustrate

some of the above principles. They are described in brief here only because they have similarities to many of the variance requests that a county might typically receive, and to illustrate the extent to which the courts intended variances to be the exception, not the rule:

1. In one case, a property owner sought to add a deck to a lake home. The house met the 75 foot setback requirement; the proposed deck would have resulted in a setback of 64 feet from the ordinary high water mark. The house had been on the property for 60 years, and there was a slope extending from the house to the water's edge. The Board of Adjustment approved the variance, finding that, among other things, the request was "modest", that there were many other properties closer to the lake than the applicant, and due to the slope the deck provided greater safety. The Wisconsin Supreme Court overturned the decision, finding that because reasonable use had been made of the property for 60 years without the deck, no hardship could be said to exist.
2. In another, a property owner was granted a variance to build a house that was larger than the available building envelope on the property. The Wisconsin Supreme Court overturned the variance, stating that the owner had failed to demonstrate that no other house plan could be accommodated on the property within the setback limitations.

It is essential for you to understand these legal standards and that it is your obligation to demonstrate that your application meets these standards. A variance is not to be granted as a convenience to the property owner. If an evaluation of your application by the Planning & Zoning staff finds that the legal standards are not met, the staff report may include a recommendation for denial of the variance. While the Board of Adjustment is not bound by the information and recommendations in the staff report, it still has an obligation to follow the standards listed here in reaching its decisions.

It is strongly recommended that you provide your plans to the Planning & Zoning Department well in advance of filing an application for a variance to allow for a preliminary review and determination as to whether the legal standards are met. If, after reviewing this information, you believe that you can meet these standards and wish to pursue an application for a variance, contact the Planning & Zoning Department for application materials.

### **Acknowledgment**

**I have read and understand the above information relating to the legal standards applicable to my variance application.**

\_\_\_\_\_  
**Applicant's signature**

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

**It is required that this sheet be signed, dated and attached to a variance application before the application will be deemed complete and placed on the agenda for a public hearing. Please note that these standards are applicable only to variances, not to conditional uses or appeals of administrative actions.**