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Variance Information

A variance is a relaxation of a dimensional standard in the Zoning Ordinance (setbacks, lot area, height, etc). Variances are decided by the Buffalo County Board of Adjustment/Appeals; they must follow rules of due process and functions similar to a court. The Board's duty is not to compromise ordinance requirements for a property owner's convenience but to apply legal standards for granting of a variance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden on use of property. It is not appropriate to contact individual board members regarding a pending decision. You will be asked to provide written materials and testimony at the public hearing in support of your petition for a variance.

Process

At the time of application, complete the following:

- 1) The completed application form and submit a fee in the amount of \$200.00.
- 2) Provide detailed plans describing your lot and project (location, dimensions, materials, limiting site conditions, etc)
- 3) Provide a written statement of verifiable facts showing that your project meets the legal criteria for a variance (3-step test below)
- 4) Stake lot lines, the proposed building footprint and other features of your property related to your request so that the Board of Adjustment may inspect the site.

Following these steps, the request will be published in a local newspaper, describing your project and noting the location and time of the required public hearing before the Board. Your neighbors and any affected state agency will also be notified. You must provide information to show that you qualify for a variance. At the hearing, you and other interested parties may appear in person or may be represented by an agent or attorney.

Three-Step Test

To qualify for a variance, your property must meet the following requirements:

1) Unnecessary Hardship

Strict application of an ordinance requirement (dimensional standard) must result in unnecessary hardship. Wisconsin case law describes hardship as being present where, in the absence of a variance, no reasonable use can be made of the property. In some more extreme cases, open space uses may be the only reasonable use of a property while in others, a scaled down home and some relaxation of a setback requirement may provide a reasonable use. The Board will balance public interests in preserving the objectives of the ordinance and private interests in a property in determining which uses are reasonable. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then this test is not met and a variance cannot be granted. An applicant may not claim 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 determined that loss of profit or financial hardship does not, by themselves, justify a variance.

2) **Hardship Due to Unique Physical Limitations of the Property**

Hardship must be due to unique physical limitations of the property, i.e. compliance with ordinance requirements is prevented by limitations (steep slopes, wetlands, etc.) that are not generally shared by other properties. 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. Minor property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amendment of the ordinance.

3) **No Harm to Public Interests**

A variance may not be granted which results in harm to public interests. In applying this test, the board must consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community. These interests are listed as objectives in the purpose statement of an ordinance and may include general public health, safety, and welfare as well as more specific issues such as environmental protection, clean drinking water and other concerns.

If you have any other questions, please call the zoning office.

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Information prepared by Land Use Education Center, UW-Stevens Point