APPLICATION FOR VARIANCE PERMIT

Date Filed:_____

Fee Paid: $400.00
Check # _____ Cash _____

Applicant or Agent:_____

Address:_____ Telephone:_____

Owner of Property:_____ Telephone:_____

Address:_____ Telephone:_____

Legal Description of Property:_____

_____

_____

Lot Size:_____ Present Use: _____ Zoning District:_____

Present improvements upon land: _____

_____

Proposed Use: _____

_____

TERMS OF ORDINANCE	VARIANCE REQUESTED
_____	_____
_____	_____

Specify reason for petition: (For example: insufficient lot area; setback or other)

_____

_____

Attach the following:

1. Plot Plan: Showing the area involved, its' location, dimensions and location of adjacent structures within 300 feet of area.
2. The applicant must submit as part of the application, those items of information

Date: _____ Signed: _____
Applicant or Agent

Date: _____ Signed: _____
Zoning Official

COUNTY OF DUNN
Dunn County Planning & Land Use Control
800 Wilson Ave., Room310
Menomonie, Wisconsin 54751

Telephone: 715.231.6521
Fax: 715.232.4099

TO: Board of Adjustment Applicant

FOR: Area Variance Request

FROM: Robert Colson – Dunn County Planning & Zoning Administrator

WHAT: Variance Procedure

A variance is a relaxation of a dimensional standard in a zoning ordinance (e.g., setbacks, lot area, height, etc.). Variances are decided by a zoning board of adjustment that must follow rules of due process and functions almost like 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 at the time of application or within 5 days after, and provide testimony at the public hearing in support of your petition for a variance.

PROCESS

At the time of application you will be asked to:

1. **complete an application** form and submit a $400.00 fee;
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, (also known as a brief);
4. **stake lot lines,** the proposed building footprint and other features of your property related to your request so that the zoning board may inspect the site.

Following these steps, the zoning office will publish notice of your request for a variance in the *Dunn County News* describing your project and noting the location and time of the required public hearing before the zoning 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. If you or your agent do not appear at the public hearing, the board must deny your request for a variance and your fee will be forfeited.

This brief should consist of a letter of which you prepare, explaining why the request is being made and provide an answer to the following questions.

1. Enforcement of the Dunn County Zoning Ordinance would result in unnecessary hardship because:

Application of the zoning ordinance to the site must cause unnecessary hardship. When does unnecessary hardship occur?

- *Denied All Reasonable Use of Property*

The Wisconsin Supreme Court has ruled that unnecessary hardship only exists when the zoning ordinance denies all reasonable use of a property. Zoning board members must judge what a reasonable use for a particular parcel is. They must consider whether the parcel as a whole provides reasonable use to the owner, not just whether a portion of the property can be used as the applicant wants. Generally, a variance is not warranted if the physical character of the property would allow the landowner to develop or build in compliance with a zoning ordinance.

For example, all reasonable use of a parcel is not denied if a board rejects a variance for a deck placed on a site within the shoreland setback. A home without a lakeside deck still offers reasonable use of property.

- *No Self-Imposed Hardships*
  The State Supreme Court also ruled that a hardship may not be self imposed. An example of a self-imposed hardship would be someone who builds at a setback and later requests a variance addition within the setback area. Such a variance should be denied because the applicant created the hardship by building at the setback and restricting future building or expansion options.

- *Loss of Profit Not Hardship*
  Loss of profit is not in itself an unnecessary hardship, nor is additional expense incurred to comply with zoning ordinances. For instance, limiting the number of units which can be built on a parcel will reduce potential profits but is not an unnecessary hardship.

- *Due to Regulations*
  The hardship cannot be one that would have existed in the absence of the zoning ordinance. So properties may not be buildable because of the physical nature of the property. For instance, if the entire parcel consists of land with a steep slope, or is entirely covered with wetlands, the property would not be suitable for development whether or not there was an ordinance regulating such development. In such extreme cases, the only reasonable use may be for open space uses.

2. The unique physical characteristics of the property prevent compliance with the ordinance because:

Unique physical characteristics of the property must prevent the applicant from developing in comply with the zoning ordinance.

- *Physical Features Wetlands, soil type, bedrock and steep slopes are some characteristics which limit use of a property.*

- *Property Limitations – Not Applicant's Circumstances: the <u>property</u> must qualify for the variance, not the situation of the applicant.*

- *Violations/Previous Variances not Grounds for Variance: existing violations on other properties, improper variances previously granted, are not grounds for a variance. Applications must be evaluated individually based on the variance standards.*

3. Granting of this variance would not harm the public interest because:

A Variance may not be granted which results in harm to public interests. In applying this test, the board must consider the impacts of the variance request and the cumulative impacts of similar requests on the interests of the neighbors, the entire community, and the general public.

- *Look to Ordinance Objectives*
  Board members should look to the objective statements in their local ordinance to determine what constitutes public interest. Local ordinance objectives generally mirror objectives set forth in state statutes, and include:
  1. *Public health, safety, comfort, convenience, and welfare of the citizens*
  2. *Conservation of natural resources*
  3. *Protect social character and property values*
  4. *Prevent harm to persons and property by flood, fire, explosion, toxic fumes and other hazards*

- *Not Just Lack of Opposition*
  The fact that there is no objection to a variance from neighbors or area residents does not necessary mean a variance would not harm the public interest. A local zoning board must consider the public at large and not just nearby property owners.

- *Minimum Relief*
  Landowners who do qualify for a variance are to be granted only the minimum relief necessary to them to have reasonable use of their property. Boards also have the authority to impose conditions on a variance to protect the public interest. Examples of conditions for variances to shoreland standards include such issues as erosion control measures or vegetative screening.

If You Qualify for a Variance

- *The Board may grant only the minimum variance which preserves a reasonable use of a parcel for its owner.*
- *It may impose conditions on project design, construction activities or operation of a facility to assure that public interests are protected.*
- *A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing of the decision in the office of the board. For this reason you may choose to delay construction on your project until after the appeal period has expired in order to minimize the risk that the court may overturn the Board decision and void your variance.*
- *Because a property rather than its owner may qualify for a variance (unique property limitations test), a variance transfers to subsequent property owners.*

Judicial Review
Following are the general review standards which courts have used to decide appeals of Board of Adjustment decisions. You might consider these points to determine whether any decision you have an interest in is likely to be reversed on appeal.

√ *Did the Board decide a matter which it is empowered by statue or ordinance to act on (**subject matter Jurisdiction**)?*
√ *Did the Board follow **proper procedures** (e.g. notice, hearing, reviewable record, open meeting law, etc.)?*
√ *Did the Board apply **proper standards** in making the decision (e.g. step test for a variance)*
√ *Was there a **rational basis** for the decision (could a reasonable person have reached this conclusion)?*
√ *Is there **evidence in the record** (facts) to support the decision?*