

# Sample Forms



The following sample forms provide information about the information necessary to make a decision, and the legal decision standards from Wisconsin law. Please tailor the forms to better suit your local situation. Specifically, you may want to:

- Require more or less factual information from the applicant, and
- Insert additional decision standards or procedural requirements from local ordinances or by-laws.

The forms are available on-line as Word documents for easy modification at [www.uwsp.edu/cnr/landcenter/pubs-documents.html](http://www.uwsp.edu/cnr/landcenter/pubs-documents.html)

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2. Administrative Appeal Application, page 165
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6. Decision Self-Audit Form, page 177

### Hearing Appearance Slip

Date:

\_\_\_\_\_

Hearing name/number:

\_\_\_\_\_

Regarding:

\_\_\_\_\_

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Representing:

\_\_\_\_\_

- I wish to speak in favor of the appeal or application.
- I wish to speak in opposition of the appeal or application.
- I wish to speak for informational purposes only.

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Tear off this portion and deliver to the Board Chair)

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**Instructions for witnesses:**

- Complete an appearance slip and deliver it to the Board chair.
- You will be recognized by the Board chair when you are to speak.
- Your testimony may be sworn if required by rules of the Board.
- Direct all comments, questions and replies to the chair.
- When asked to speak:
  1. State your name and place of residence.
  2. Indicate whether you represent a group or association.
  3. Indicate whether or not you favor the appeal or application or are speaking for informational purposes.
  4. Please state your qualifications to speak on this matter or the source of your information.
  5. Limit your testimony to facts relevant to the case at hand.
  6. Limit your comments to the time period specified by the chair.
  7. Avoid repetitive testimony.

\_\_\_\_\_ Zoning Board of Adjustment/Appeals

[address for correspondence with the zoning board]

### *Administrative Appeal Application*

\_\_\_\_\_ Zoning Board of Adjustment/Appeals

Petition # \_\_\_\_\_ Date filed \_\_\_\_\_  \$ \_\_\_\_\_ fee paid (payable to \_\_\_\_\_)

Name	
Address	
Phone	

Legal description: \_\_\_\_ 1/4, \_\_\_\_ 1/4, S \_\_\_\_, T \_\_\_\_ N, R \_\_\_\_ E  
 City/Village/Town of \_\_\_\_\_  
 Fire number \_\_\_\_\_ Tax parcel number \_\_\_\_\_  
 Lot area & dimensions: \_\_\_\_\_ sq. ft., \_\_\_\_\_ x \_\_\_\_\_ ft.  
 Zoning district \_\_\_\_\_  
 Current use & improvements \_\_\_\_\_

Nature & disposition of any prior petition for appeal, variance or conditional use \_\_\_\_\_

Description of all nonconforming structures & uses on the property \_\_\_\_\_

**Reason for Appeal** (Check the type of administrative decision appealed.)

Zoning district boundary dispute (location and districts involved)  
 \_\_\_\_\_

Describe petitioner's boundary location criteria:  
 \_\_\_\_\_

Describe petitioner's boundary determination:  
 \_\_\_\_\_

Ordinance interpretation (include section number)  
 \_\_\_\_\_

Describe petitioner's interpretation and rationale:  
 \_\_\_\_\_

Administrative decision/measurement/order in dispute  
 \_\_\_\_\_

I certify that the information I have provided in this application is true and accurate.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Petitioner

Remit to: [Zoning office address, phone & e-mail]

### *Conditional Use/Special Exception Application*

\_\_\_\_\_ (Governing Body/Committee/Commission/Zoning Board)

Date filed \_\_\_\_\_  \$\_\_\_\_\_ fee paid (payable to \_\_\_\_\_)

	Owner or agent	Contractor
Name		
Address		
Phone		

Legal description: \_\_\_\_ 1/4, \_\_\_\_ 1/4, S \_\_\_\_, T \_\_\_\_ N, R \_\_\_\_ E  
 City/Village/Town of \_\_\_\_\_  
 Fire number \_\_\_\_\_ Tax parcel number \_\_\_\_\_  
 Lot area & dimensions: \_\_\_\_\_ sq. ft., \_\_\_\_\_ x \_\_\_\_\_ ft.  
 Zoning district \_\_\_\_\_  
 Current use & improvements \_\_\_\_\_

Nature & disposition of any prior petition for appeal, variance or conditional use  
 \_\_\_\_\_

Description of all nonconforming structures & uses on the property \_\_\_\_\_  
 \_\_\_\_\_

Conditional use requested (ordinance section # & specific use):  
 \_\_\_\_\_

General standards for approval:  
 \_\_\_\_\_  
 \_\_\_\_\_

Specific (design) standards for approval:  
 \_\_\_\_\_  
 \_\_\_\_\_

Design/practices proposed to achieve standards:  
 \_\_\_\_\_  
 \_\_\_\_\_

Attach a plat or other map of your site and detailed construction plans.

I certify that the information I have provided in this application is true and accurate.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Applicant/Agent/Owner

Remit to: [Zoning office address, phone & e-mail]

## *Variance Application*

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the zoning board of adjustment/appeals. The zoning board is a quasi-judicial body because it functions almost like a court. The board's job is not to compromise ordinance provisions for a property owner's convenience but to apply legal criteria provided in state laws, court decisions and the local ordinance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

### **Process**

At the time of application you will be asked to:

1. **Complete an application** form and submit a \$\_\_\_\_\_ fee;
2. **Provide detailed plans** describing your lot and project (location, dimensions and materials);
3. **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance (Three Step Test in Part 2); and
4. **Stake out lot corners or lines**, the proposed building footprint and all other features of your property related to your request so that the zoning board may inspect the site.

Following these steps, the zoning agency will publish notice of your request for a variance in the county's official newspaper 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. The burden will be on you as property owner to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of hearing. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and must then deny your application.

## Variance Application

\_\_\_\_\_ Zoning Board of Adjustment/Appeals

**Part 1: General information and alternatives analysis**

*To be completed jointly by the applicant and zoning staff.*

Petition # \_\_\_\_\_ Date filed \_\_\_\_\_  \$\_\_\_\_\_ fee paid (payable to \_\_\_\_\_)

	Owner/agent	Contractor
Name		
Address		
Phone		

Legal description: \_\_\_\_ 1/4, \_\_\_\_ 1/4, S \_\_\_\_, T \_\_\_\_ N, R \_\_\_\_ E  
 City/Village/Town of \_\_\_\_\_  
 Fire number \_\_\_\_\_ Tax parcel number \_\_\_\_\_  
 Lot area & dimensions: \_\_\_\_\_ sq. ft., \_\_\_\_\_ x \_\_\_\_\_ ft.  
 Zoning district \_\_\_\_\_

Current use & improvements:

Description of any prior petition for appeal, variance or conditional use:

Description and location of all nonconforming structures & uses on the property:

Ordinance standard from which variance is being sought (section number and text):

Describe the variance requested:

Type of variance requested:

\_\_\_\_\_ **use variance** – permits a landowner to put a property to an otherwise prohibited use.

\_\_\_\_\_ **area variance** – provides an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.



**Part 2: Three-Step Test**

To qualify for a variance, the applicant must demonstrate that their property meets the following three requirements.

1) Unique property limitations *(To be completed by the applicant)*

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. 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. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

Do unique physical characteristics of your property prevent compliance with the ordinance?

€ Yes. Where are they located on your property? Please show the boundaries of these features on the site map that you used to describe alternatives you considered.

€ No. A variance cannot be granted.

2) No Harm to Public Interests *(To be completed by zoning staff)*

A variance may not be granted which results in harm to public interests. In applying this test, the zoning board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- *Public health, safety and welfare*
- *Water quality*
- *Fish and wildlife habitat*
- *Natural scenic beauty*
- *Minimization of property damages*
- *Provision of efficient public facilities and utilities*
- *Achievement of eventual compliance for nonconforming uses, structures and lots*
- *Any other public interest issues*

Ordinance purpose:

Purpose(s) of standard from which variance is requested:

Analysis of impacts

Discuss impacts that would result if the variance was granted. For each impact, describe potential mitigation measures and the extent to which they reduce project impact (completely, somewhat, or minor). Mitigation measures must address each impact with reasonable assurance that it will be reduced to an insignificant level in the short term, long term and cumulatively.

Short term impacts: (through the completion of construction)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Long term impacts: (after construction is completed)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Cumulative impacts: (What would happen if a similar variance request was granted for many properties?)

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Impact:

Mitigation:

Extent to which mitigation reduces project impact:

Will granting the variance harm the public interest?

€ Yes. A variance cannot be granted.

€ No. Mitigation measures described above will be implemented to protect the public interest.

3) Unnecessary hardship *(To be completed by the applicant)*

An applicant may not claim unnecessary 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 also 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.

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- For a use variance, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance.

**Note:** While Wisconsin Statutes do not specifically prohibit *use variances*, there are a number of practical reasons why they are not advisable:

- Unnecessary hardship must be established in order to qualify for a variance. This means that without the variance, no reasonable use can be made of the property.
- Many applications for use variances are in fact administrative appeals. Often the zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a *use variance* but an appeal of the administrator's interpretation of ordinance text.
- Zoning amendments are a more comprehensive approach than use variances. Elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses or may undermine land use plan and ordinance objectives. Towns have meaningful input (veto power) for zoning amendments to general zoning ordinances.
  - Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
  - Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.

Is unnecessary hardship present?

- Yes. Describe:
  
- No. A variance cannot be granted.

**Part 3: Construction Plans**

*To be completed and submitted by the applicant.*

Attach construction plans detailing:

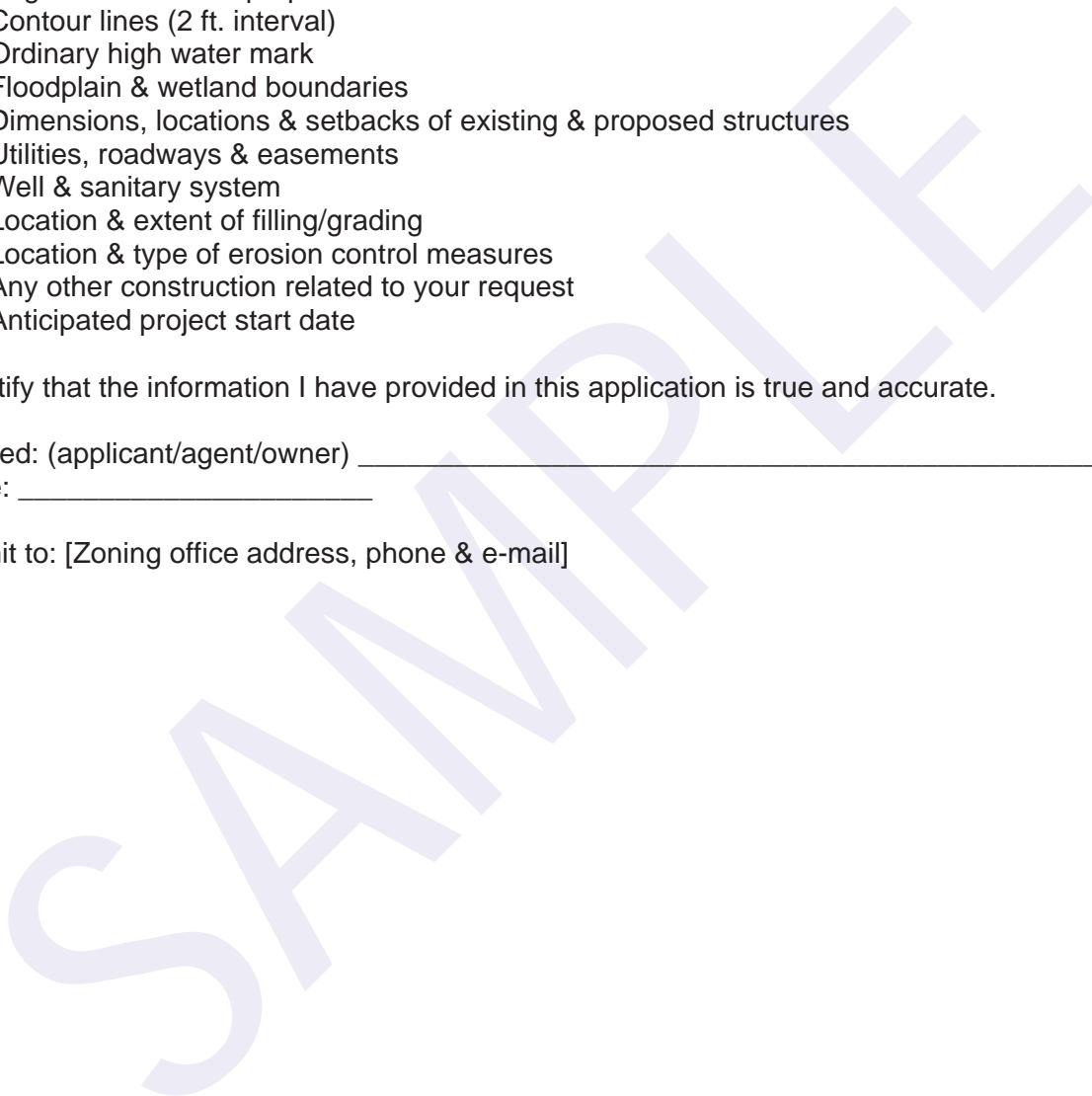
- Property lines
- Vegetation removal proposed
- Contour lines (2 ft. interval)
- Ordinary high water mark
- Floodplain & wetland boundaries
- Dimensions, locations & setbacks of existing & proposed structures
- Utilities, roadways & easements
- Well & sanitary system
- Location & extent of filling/grading
- Location & type of erosion control measures
- Any other construction related to your request
- Anticipated project start date

I certify that the information I have provided in this application is true and accurate.

Signed: (applicant/agent/owner) \_\_\_\_\_

Date: \_\_\_\_\_

Remit to: [Zoning office address, phone & e-mail]



*Decision Form*

\_\_\_\_\_ Zoning Board of Adjustment/Appeals

Application/petition # \_\_\_\_\_

**FINDINGS OF FACT**

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: \_\_\_\_\_

Affidavit of publication/posting is on file.

Hearing Date: \_\_\_\_\_

A. The applicant or appellant is (name and address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. The applicant or appellant is the owner/lessee/mortgagee of the following described property which is the subject of the application or appeal: \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, City/Village/Town of \_\_\_\_\_, \_\_\_\_\_ County known as (street address) \_\_\_\_\_

C. The property is presently in use for \_\_\_\_\_ and has been so used continuously since \_\_\_\_\_.

D. The property includes a nonconforming structure/use described as

\_\_\_\_\_  
\_\_\_\_\_

E. The property has been the subject of a prior appeal/variance/conditional use described as

\_\_\_\_\_  
\_\_\_\_\_

F. The applicant or appellant proposes (brief project description/attach plans):

G. The applicant or appellant requests:

- an appeal of the zoning administrator's determination
  - a conditional use/special exception
  - a use variance
  - an area variance
- under Section \_\_\_\_\_ of the ordinance.

The features of the proposed construction and property that relate to the grant or denial of the application or appeal are (refer to the language/standards of the ordinance):

\_\_\_\_\_  
\_\_\_\_\_

**CONCLUSIONS OF LAW**

Based on the above findings of fact the Board concludes that:

Appeal/Interpretation – The order of the zoning administrator (is/is not) in excess of his/her authority because (or)

The zoning administrator’s interpretation of Section \_\_\_\_\_ of the zoning code (is/is not) a correct interpretation because

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Variance – The variance (does/does not) meet all three of the following tests:

A. The hardship (is/is not) due to physical limitations of the property rather than the circumstances of the appellant because

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B. The variance (will/will not) harm the public interest because

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C. Unnecessary hardship

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.

D. Unnecessary hardship (is/is not) present because

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Conditional Use – The application for a conditional use permit (does/does not) qualify under the criteria of Section \_\_\_\_\_ of the ordinance because

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**ORDER AND DETERMINATION**

On the basis of the above findings of fact, conclusions of law and the record in this matter the board orders:

Appeal/Interpretation – The zoning administrator’s order/interpretation of the zoning code or map is (affirmed/modified/reversed) and the administrator is ordered to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Variance/Conditional Use – The requested (variance/conditional use) is (denied/granted/granted-in-part) subject to the following conditions/mitigation:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

The zoning administrator is directed to issue a zoning permit incorporating these conditions and certifying by the petitioner/applicant’s signature that he/she understands and accepts the conditions.

Expiration of permit. Any privilege granted by this decision must be exercised within \_\_\_\_\_ months of the date of this decision after obtaining the necessary building, zoning and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

Revocation. This order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

\_\_\_\_\_ Zoning Board of Adjustment/Appeals

Signed \_\_\_\_\_ Attest \_\_\_\_\_  
Chairperson Secretary

Dated: \_\_\_\_\_

Filed: \_\_\_\_\_

### *Decision Self Audit Form*

Use an annual self-assessment of board activities to increase board efficiency and the effectiveness of ordinance standards:

1. Revise ordinance language to reflect interpretations of the board;
2. Adjust dimensional standards where similar limiting site conditions make current standards unworkable or ineffective (e.g. nonconforming lots); and
3. Convert conditional uses to permitted uses if appropriate location, design and use standards can be developed.

Track and assess disposition of individual petitions/applications or categories of similar requests. Discuss your findings with the planning committee/commission and cooperate to propose appropriate amendments to the local governing body.

### **EXAMPLES**

#### **Administrative Appeals**

Section & Subject	Decision/Interpretation	Recommendations
9.12 – Modification of nonconforming structures	Modifications requiring permit & subject to limitations: Construction beyond foundation footprint? Additional story or basement? Replacement of structural members? Foundation replacement included?	Revise ordinance to enumerate activities requiring permit.
3.4 – Minimum area requirement	Are screened porches included in “enclosed area” requirement?	Revise ordinance to better describe “enclosed areas.”
4.6 – Setback measurement	From what point on a structure and in what plane are setbacks measured?	Revise ordinance to state “setbacks are measured from nearest connected portion of a structure and in a horizontal plane.”

<b>Variations</b>				
Section & Subject	Relaxation requested	Granted/Denied	Conditions	Recommendations
3.2 – 75' Shore setback for new home	<5' 5-10' 11-20' 21-30' 31-50' >50'	5/4 6/3 3/12 2/22 1/5	Remove NC accessory bldg. (6) Plant/maintain screening vegetation (4) Restore 50' shore buffer (5)	Standardize conditions 1-3 as mitigation requirements in ordinance.

<b>Conditional Use Permits</b>				
Section & Subject	Granted/Denied	Conditions	Recommendations	
4.1 - Fill & grade	23/4	Avoid areas >15% slope (23) Divert runoff around site during construction & stabilization (23) Stabilize according to NRCS guidelines for site (23)	Convert to permitted use for areas <2,000 sq. ft. & <15% slope provided conditions 2 & 3 are implemented & pre-construction photo is submitted.	