BOARD OF ADJUSTMENT

# VARIANCE DECISION FORM – GENERAL ZONING

*All BOA Members Must Complete Individually*

**The BOA may only grant a variance if the applicant provides evidence that they meet all three legal standards below.**

1. **Unnecessary hardship** (check area variance or use variance)

* **For an area variance,** unnecessary hardship existswhen, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience is not sufficient to meet the unnecessary hardship standard. (*Snyder v. Waukesha County Zoning Bd. Of Adjustment*, 1976).
* **For a use variance**, unnecessary hardship exists only if there is no reasonable use of the property without a variance.

The literal enforcement of the ordinance standard(s) ( **will / will not** ) result in an unnecessary hardship because…

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2. **The hardship must be due to unique property limitations** such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by nearby properties. Further, the entire property must be considered, if a code-compliant location(s) exists, a hardship due to unique property limitations **does not exist.**

The hardship ( **is / is not** ) due to unique conditions of the property because…

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3. A variance may not be granted which results in harm to the **public interests.** The public interests are the objectives listed in the purpose section of the ordinance.

**Washburn County Sec. 38-311. - Purpose and intent.** Plug in local ordinance purposes

The purpose of this article is to promote and to protect the public health, morals, safety, and general welfare of the county. It is intended to encourage the use of lands and natural resources in Washburn County in accordance with their character and adaptability; to promote orderly development; to secure safety to health, life and property; to prevent highways from economic suffocation by encroaching uses; to preserve land values and insure a quality environment for future generations. This article is intended to accomplish this purpose by providing for the proper locations, construction and use of buildings, structures, and the use of land, shorelands, air, and water within the unincorporated areas of Washburn County.

The variance ( **will / will not** ) harm the public interests because…

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**Order and Determination**: The BOA member shall decide / vote on the application and direct the zoning department accordingly. The BOA member must refer to specific evidence when rendering a decision.

The application **( does / does not )** meet all three of the above tests and therefore the variance should be ( **granted / denied** ). The BOA is only allowed to grant a variance if the applicant provides evidence that they meet all three tests:

1. Ordinance standards will result in unnecessary hardship.
2. The hardship is due to unique conditions of the property.
3. The variance will not harm the public interests.

If the applicant has met all three tests, the BOA may apply conditions to the variance to ensure the public interests are not harmed.

**Conditions that apply to this variance:**

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**BOA Member Signature**

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**Guiding Principles to Grant a Variance**

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

**Parcel-as-a-whole.** The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County,* 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

**Self-imposed hardship.** An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee,* 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

**Circumstances of applicant.** Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v.Waukesha County Zoning Bd. of Adjustment,* 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

**Financial hardship.** Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County,* 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment,* 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

**Uniqueness of the property.** Where the hardship imposed upon an applicant’s property is no greater than that suffered by nearby lands, the BOA may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption. *Arndorfer v. Sauk County Bd. Of Adjustment*, 162 Wis. 2d 246, 469 N.W.2d 831 (1991).

**Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of* *Hempstead,* 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

**Previous variance requests.** Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

**Objections from neighbors.** The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment,* 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

**Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri,* 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment,* 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)