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APPENDIX A

Reference Materials

Zoning Boards of Adjustment and Appeals

Zoning Board Handbook for Zoning Boards of Adjustment/Appeals, 2nd edition. Lynn Markham and Rebecca Roberts. 2006, Published by Center for Land Use Education at 715-346-3783 or <http://www.uwsp.edu/cnr/landcenter/pubs.html>

Guide for County Boards of Adjustment, 3rd edition. Robert Horowitz and Richard C. Yde. 2004. 41 pages. Addresses related topics in question and answer form with legal citations. Published by Wisconsin County Mutual Insurance Corporation at 608-224-5330.

The Board of Adjustment. V. Gail Easley and David A Theriaque. 2005. Available from APA Planners Press at 312-431-9100 or <http://www.planning.org/bookservice>, libraries and bookstores.

The Zoning Board Manual. Frederick H. Bair, Jr. 1984. Available from APA Planners Press at 312-431-9100 or <http://www.planning.org/bookservice>, libraries and bookstores.

Zoning

Zoning. Adapted by Kevin Struck from Brian Ohm's *Guide to Community Planning in Wisconsin*. Available on the Center for Land Use Education website at <http://www.uwsp.edu/cnr/landcenter/pubs.html>

"The Zoning Ordinance." Chapter 16 in *The Small Town Planning Handbook*, 2nd edition. Thomas L. Daniels, John W. Keller and Mark B. Lapping. 1995. 305 pages. Available from APA Planners Press at 312-431-9100 or <http://www.planning.org/bookservice>, libraries and bookstores.

The Citizens Guide to Zoning. Herbert H. Smith. 1983. 242 pages. Available from libraries and bookstores.

Local Government

Wisconsin Town Officer's Handbook, 2nd edition. James H. Schneider and Richard Stadelman (editor). 2006. 292 pages. Published by the Wisconsin Towns Association at (715) 526-3157 or <http://www.wisctowns.com>

Handbook for Wisconsin Municipal Officials. 2002. Published by the League of Wisconsin Municipalities at 608-267-2380 or <http://www.lwm-info.org/>

Wisconsin County Supervisor's Handbook. 2004. 142 pages. Published by the Wisconsin Counties Association at 1-866-404-2700 or <http://www.wicounties.org/>

Planning and Zoning Committees/Commissions

Plan Commission Handbook. 2002. 84 pages. Published by Center for Land Use Education at 715-346-3783 or <http://www.uwsp.edu/cnr/landcenter/pubs.html>

Job of the Planning Commissioner. 3rd edition revised. Albert Solnit. 1987. 198 pages. Available from libraries and bookstores.

Open Meetings Law

Wisconsin Open Meetings Law: A Compliance Guide. Peggy A. Lautenschlager, Attorney General, Wisconsin Department of Justice. 2005. 38 pages. Explains Wisconsin's Open Meetings Law and discusses significant cases that have an impact on the law's implementation. Available at: <http://www.doj.state.wi.us/AWP/OpenMeetings/2005-OML-GUIDE.pdf>

Understanding Wisconsin's Open Meeting Law. Burt P. Natkins and James H. Schneider. 1994. 145 pages. Describes application of the open meeting law, required notice, exemptions and more. Available from Local Government Services, Inc., 185 W. Netherwood St., Oregon, WI 53575-1153 or 608-835-7761.

Public Records Law

Wisconsin Public Records Law: Compliance Outline. Peggy A. Lautenschlager, Attorney General, Wisconsin Department of Justice. 2005. 57 pages. Explains Wisconsin's Public Records Law and discusses significant cases that have an impact on the law's implementation. Available at: <http://www.doj.state.wi.us/dls/docs/publicrecords805.pdf>

Water Law

Wisconsin Water Law: A Guide to Water Rights and Regulations, 2nd edition. Paul G. Kent and Tamara A. Dudiak. 2001. Available from Cooperative Extension Publications at 608-262-3346.

Newsletters

Land Use Tracker. Four issues per year covering Wisconsin land use issues, including zoning. Available from the Center for Land Use Education at <http://www.uwsp.edu/cnr/landcenter/newsletters.html> or in print by calling 715-346-3879.

Zoning Bulletin. Monthly bulletins summarizing the most significant recent zoning lawsuits from throughout the United States. Available from 800-229-2084 or <http://www.qpgmunicipal.com/zo.shtml>

Zoning News. Monthly four-page newsletter monitors the latest trends in local land-use controls using case studies. Available at 312-431-9100 or <http://www.planning.org/ZoningNews/index.htm>

Plan Commissioners Journal. Four issues per year, about 20 pages per issue, about planning and zoning issues. Available from 802-864-9083 or <http://www.plannersweb.com>

Websites

UW-Extension Center for Land Use Education www.uwex.edu/ces/landcenter

UW-Extension Local Government Center www.uwex.edu/lgc/

Wisconsin DNR shoreland zoning www.dnr.state.wi.us/org/water/wm/dsfm/shore/title.htm

Wisconsin DNR floodplain zoning www.dnr.state.wi.us/org/water/wm/dsfm/flood/rules.htm

American Planning Association www.planning.org

APPENDIX B

Legal Resources

When legal writers make assertions about the law or quote or paraphrase published sources, they must support each statement with a reference to the original material. This legal citation or cite may be to a particular court opinion, a statute, an administrative opinion, a regulation, or a secondary authority such as a treatise or a law review article.¹ This appendix provides a primer on the organization and referencing systems used for locating state and local regulations and case law.



State Regulations

The terms used to identify legislative acts can be confusing. The state legislature adopts laws called statutes (e.g., Wisconsin Statutes Chapter 59: Counties, or Wis. Stat. § 59). These laws often provide only general policies. State agencies hold public hearings and adopt administrative rules to provide the detailed regulations needed to implement general statutory policies. After review by the state legislature, administrative rules have the full force of law (e.g., Wisconsin Administrative Code ch. NR 115: Shoreland Management, or Wis. Admin. Code ch. NR 115).

Annotations

Following each affected section of state statutes you will often find annotations that provide information on the history of the section, interpretative notes, related court decisions or attorney general opinions, and published articles.

State statutes and administrative rules are available at many libraries and on-line at:

<http://www.legis.state.wi.us>.

Local Ordinances

Similar to state statutes and administrative rules, local ordinances are organized and referenced in the following manner.

Numbering systems

Understanding the numbering system, terms and abbreviations used to identify specific provisions and to organize an ordinance or statute is essential to interpretation. The following example from Wisconsin Statutes illustrates an organizational scheme that must be mastered in order to determine a law's meaning. For example, "s. 8.31(2)(a)" in an ordinance refers to:

Chapter = ch. 8

Section = s. 8.31 (literally "section 31 of chapter 8" but common usage is "section 8 *point* 31")

Subsection = sub. (2)

¹ Information excerpted from *Introduction to Legal Materials: A Manual for Non-Law Librarians in Wisconsin* by the Law Librarians Association of Wisconsin. Available at: <http://www.aallnet.org/chapter/law/paliguide/>.

Paragraph = par. (a)

Internal references

The entire citation is often not used to refer to a provision within the same section. For example, in s. 8.31(2), “sub. (b)” refers to s. 8.31(2)(b).

Case Law

Case law is the dynamic body of law containing legal principles derived from the application of law to individual court cases. Case law records the facts of controversy within a case, explains the judges' decisions, and in some cases provides judges' dissenting opinions. Following exhaustion of local relief remedies, zoning decisions may be appealed through several levels of court, starting with the circuit courts and preceding through the court of appeals, and in rare instances the Wisconsin Supreme Court or U.S. Supreme Court. When examining the findings of similar cases, higher court decisions take precedent over lower court decisions.

Citations to court decisions generally begin with the name of the case, which is usually in the form of Plaintiff v. Defendant. The first number to appear will be a reference to a volume number. Following the first number is an abbreviation for a court reporter. Lists of these abbreviations and the titles for which they stand are included as appendices in many legal research texts. Following the reporter abbreviation a series number may appear, such as 2d. Many reporters are numbered up to a certain point, then begin again with volume one of a second series. Following the series number, if there is one, will be a number indicating the page on which the decision begins. A second page number may indicate a specific page reference within a particular case. Many citations will also include a parallel cite, which leads to the same case in a different set of reporters. Finally, the citation may end with the date of the decision enclosed in parentheses.

The Wisconsin Supreme Court adopted a new, slightly different citation format for Wisconsin decisions in 2000. In Wisconsin, cases are now also identified by a public domain citation that includes a sequential number assigned by the clerk of court, and a paragraph number that indicates where in the decision the cited information is located. Illustrations of various case citations are provided below.²

Figure 42: Citation Format for Wisconsin Court Decisions Before 2000

Snyder v. Waukesha County Zoning Bd., 74 Wis. 2d 468, 247 N.W.2d 98 (1976)	
↑ <i>Case name</i>	↑ ↑ ↑ <i>Location(s) in official reporters Year</i>
74 Wis. 2d 468	Volume 74, Wisconsin Reports Second Edition, page 468
247 N.W.2d 98	Volume 247, North Western Reporter Second Edition, page 98
Ct. App.	Indicates a court of appeals decision when placed in parentheses prior to the year

² Information excerpted from *Introduction to Legal Materials: A Manual for Non-Law Librarians in Wisconsin* by the Law Librarians Association of Wisconsin. Available at: <http://www.aallnet.org/chapter/law/paliguide/>.

Figure 43: Citation Format for Wisconsin Court Decisions *After 2000*

<i>State ex rel. Ziervogel v. Washington County BOA, 2004 WI 23, 269 Wis. 2d 549, 676 N.W. 2d 401</i>		
↑ <i>Case name</i>	↑ <i>Public domain</i>	↑ <i>Location(s) in official reporters</i>
<i>ex. rel.</i>	Abbreviation for <i>ex relatione</i> meaning “on behalf of”	
2004 WI 23	Year 2004 Wisconsin Supreme Court case 23 (may be followed by ¶ paragraph #)	
WI App.	Indicates a court of appeals decision when placed in the public domain	
269 Wis. 2d 549	Volume 269, Wisconsin Reports Second Edition, page 549	
676 N.W. 2d 401	Volume 676, North Western Reporter Second Edition, page 401	

Websites for Accessing Wisconsin Court Decisions

Wisconsin Supreme Court decisions released since September 1995

<http://www.courts.state.wi.us/opinions/sopinion.htm>

Wisconsin Court of Appeal decisions released since June 1995

<http://www.courts.state.wi.us/opinions/aopinion.htm>

Older Wisconsin Supreme Court and Court of Appeal decisions

http://web.lexis-nexis.com/universe/form/academic/s_casecite.html

DNR’s *Zoning Case Law in Wisconsin*. Includes summaries of published decisions of the Wisconsin Supreme Court and Court of Appeals relevant to shoreland and floodplain zoning in Wisconsin. DNR Publication # WT-540, Revised October 2004.

<http://www.dnr.wi.gov/org/water/wm/dsfm/shore/documents/zoning-case-law-2004.pdf>

To request supplemental updates, contact:
WDNR Dam Safety/Floodplain/Shoreland Section
101 S. Webster St.
P.O. Box 7921
Madison, WI 53707-7921
Telephone: 608-266-8030

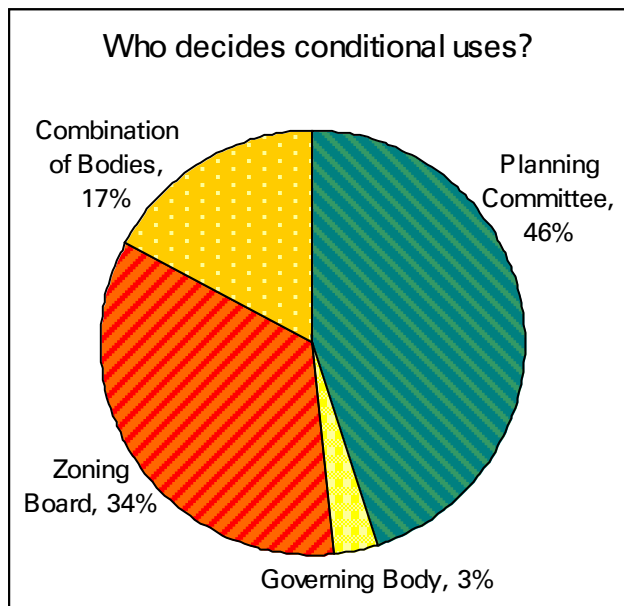
APPENDIX C

Who Decides Whether to Grant Conditional Uses and Special Exceptions?

Conditional use is used in this appendix to mean both conditional uses and special exceptions.

The local governing body must determine by ordinance whether the zoning board, the governing body or the planning commission/committee will decide special exceptions and conditional use permits.³ Figure 44 shows who decides conditional uses for Wisconsin counties based on a 2004 survey completed by 31 counties.

Figure 44: Conditional Use Decision Makers



When the local ordinance is written or amended to determine which body is best suited to decide conditional uses, consider the following factors:

- **Plan commission/committee** - This body commonly decides conditional use permits because they are usually the most knowledgeable about the community plan and zoning ordinance, as well as relevant state statutes and case law. The plan commission/committee is continuously involved in the process of recommending legislative changes in the zoning ordinance and is therefore more apt to be conversant with the “purpose and intent” of the ordinance than the zoning board.⁴ In some cases, the plan commission/committee makes recommendation on conditional use permits to the governing body.

³ Counties - Wis. Stat. § 59.694(7)(a); Cities, villages and towns with village powers - Wis. Stat. § 62.23(7)(e)1

⁴ *State ex rel. Skelly Oil Co. v. City of Delafield*, 58 Wis. 2d 695, 207 N.W.2d 585 (1973)

There are drawbacks to the plan commission/committee deciding conditional use permits. Their biases about ordinance provisions may be on record from the time of ordinance adoption/amendment. In addition, there could be a conflict between the role of being an unbiased decision maker when deciding conditional use permits and the fact that some plan commission/committee members are elected and may be tempted to represent their constituents rather than make objective decisions based on applicable standards and evidence in the record.

- **Governing body** - The governing body typically does not know the ordinance as thoroughly as the plan commission/committee and often already has a full workload. Sometimes, the plan commission/committee makes a recommendation to the governing body on conditional use permits. The governing body has the same drawbacks as the plan commission/committee in deciding conditional use permits by having recorded biases and being elected officials. Additionally, the total amount of time invested in conditional use permit decisions will likely increase significantly if assigned to the governing body as it has many more members than either of the other two bodies.
- **Zoning board** - This body should be relatively familiar with the zoning ordinance due to its responsibilities for deciding variances and administrative appeals, yet may not consider community-wide planning issues to the same extent as the plan commission/committee. Because zoning board members are appointed rather than elected, they clearly do not represent a group of constituents and are less likely to be biased.

APPENDIX D

Blank Forms

1. Hearing appearance slip
2. Administrative appeal application
3. Conditional use application
4. Variance application
5. Decision form
6. Decision self-audit form

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)

-

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]

SAMPLE

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]

SAMPLE

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: _____
Applicant/Agent/Owner

Date: _____

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

SAMPLE

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 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 below); 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. If any of these requirements are not met or 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.

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:

Describe the effects on the property if the variance is not granted:

Alternatives

Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below.

- a. Alternatives you considered that comply with existing standards. If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

- b. Alternatives you considered that require a lesser variance and reasons you rejected them. If you reject such alternatives, provide the reasons you rejected them.

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):

SAMPLE

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

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

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

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

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

SAMPLE

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: _____

SAMPLE

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.”

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

Conditional Use Permits			
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.

APPENDIX E

Real Life Examples

1. Agenda and Public Notice (adapted from Jefferson County)
2. Zoning Board Staff Report (adapted from Green Lake County)
3. Variance for reduced roadway setback for deck on tavern - Denied (Lincoln County)
4. Variance for reduced roadway setback for garage - Granted (Lincoln County)

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

Lloyd Holterman, Chair; Janet Sayre Hoeft; Lloyd Zastrow; Donald Carroll, Alternate; Dale Weis, Alternate

BEGINNING AT *** ON THURSDAY, JULY 13, 2006
ROOMS 203 & 205, JEFFERSON COUNTY COURTHOUSE
320 S. MAIN ST., JEFFERSON, WI 53549**

- 1. Call to Order-Room 203**
- 2. Roll Call**
- 3. Certification of Compliance with Open Meetings Law Requirements**
- 4. Approval of Agenda**
- 5. Approval of June 8, 2006 Meeting Minutes**
- 6. Site Inspections – Beginning at ***** and Leaving from Room 203**
- 7. Public Hearing – Beginning at 1 p.m. in Room 205**

**NOTICE OF PUBLIC HEARING
JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT**

NOTICE IS HEREBY GIVEN that the Jefferson County Zoning Board of Adjustment will conduct a public hearing at 1 p.m. on Thursday, July 13, 2006 in Room 205 of the Jefferson County Courthouse, Jefferson, Wisconsin. Matters to be heard are applications for variance from terms of the Jefferson County Zoning Ordinance. No variance may be granted which would have the effect of allowing in any district a use not permitted in that district. No variance may be granted which would have the effect of allowing a use of land or property which would violate state laws or administrative rules. Subject to the above limitations, variances may be granted where strict enforcement of the terms of the ordinance results in an unnecessary hardship and where a variance in the standards will allow the spirit of the ordinance to be observed, substantial justice to be accomplished and the public interest not violated. Based upon the findings of fact, the Board of Adjustment must conclude that: 1) Unnecessary hardship is present in that a literal enforcement of the terms of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; 2) The hardship is due to unique physical limitations of the property rather than circumstances of the applicant; 3) The variance will not be contrary to the public interest as expressed by the purpose and intent of the zoning ordinance. PETITIONERS, OR THEIR REPRESENTATIVES, SHALL BE PRESENT. There may be site inspections prior to public hearing; decisions shall be rendered after public hearing on the following:

V1192-06 – George & Mary Presley: Variance to allow a third accessory structure in a Residential R-2 zone. The site is at W6690 Oak Rd. in the Town of Watertown, on PIN 032-0815-0333-005 (3 Acres) in a Residential R-2 zone.

V1193-06 – Howard Jacobs: Allow building reconstruction at less than the required road setbacks. The site is at N8646 Jacobs Lane in the Town of Waterloo, on PIN 020-0973-1521-000 (35.124 Acres) in an Agricultural A-1 zone.

V1194-06 – Stanley Johnson: Variance to sanction garage construction at less than the required side yard setback in a Residential R-1 zone. The site is at N1030 Lake Rd. in the Town of Sumner, on PIN 029-0611-1835-036 (0.5 Acre).

V1195-06 – Joseph Price/Mary Clark Property: Reduce the minimum required frontage on and access to a public road for A-1 zoned property on Kroghville Road. The site is part of PIN 019-0828-1781-000 (40 Acres) in the Town of Lake Mills.

- 8. Decisions on Above Petitions**
- 9. Adjourn**

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT
Lloyd Holterman, Chairman

GREEN LAKE COUNTY STAFF REPORT

REQUEST: a variance to allow construction of four single-family dwellings on a single land area.

EXISTING ZONING AND USES OF ADJACENT AREA: The lot in question is zoned Recreational (RC), located within the shoreland jurisdiction of Green Lake, and occupied by a commercial restaurant and guest house. The lands surrounding this lot are zoned Single-Family Residential (R-1), located in the shoreland jurisdiction, and characterized by single-family dwellings and similar residential structures/uses.

ADDITIONAL INFORMATION/ANALYSIS: The owner/applicant is proposing to construct four single-family dwelling units under condominium style ownership. Section 350-13B of the County Zoning Ordinance clearly states there shall be no more than one principal residential structure per land area. There are no limiting factors to prevent compliance with the zoning ordinance. The plan submitted with this request is the desired outcome; not one conceived out of hardship.

VARIANCE CRITERIA: To qualify for a variance it must be demonstrated that the property meets the following three requirements:

1. Unnecessary Hardship

- For use variances – no reasonable use of the parcel as a whole
- For area variances – compliance with standards would unreasonably prevent landowner from using property for permitted purpose or be unnecessarily burdensome
- Hardship may not be self-created
- Economic or financial hardship is not justification

2. Unique Property Limitations

- Limitations such as steep slopes, wetland, shape or size prevent compliance with ordinance
- Limitations common to a number of properties is not justification
- Circumstances of the individual is not justification

3. No Harm to Public Interest

- Variance may not harm public interest; look to ordinance purpose and intent for guidance
- Short term, long term and cumulative impacts on neighborhood, community and general public

- Alternative designs and locations on the property have been investigated
- Only minimal relief may be granted for use of property
- May impose conditions on development to mitigate adverse impacts

STAFF COMMENTS: Staff has the following comments related to this variance request:

1. Unnecessary Hardship

- Compliance with the ordinance standards would limit use of the premises to one structure (having multiple units), not multiple structures as proposed
- The hardship of proposing to place four new structures on the property is self-created

2. Unique Property Limitations

- Property does not appear to have unique limiting factors that prevent compliance with ordinance
- Other lots in this area share similar site conditions

3. No Harm to Public Interest

- This request and the cumulative impact of this type of development pattern could change the density and character of the shoreland area, effecting the public interest

- Alternate designs that comply with the ordinance were not presented; a compliant design may exist
- Only minimal relief should be allowed; no relief is needed if code compliant project could occur
- If this request meets the three-part test, conditions should be attached as part of approval

Insert examples of variances granted and denied (2 pdf files)