

Guide for Application for a Zoning Ordinance Variance

Town of Sherman Sheboygan County

As a potential applicant for a variance, you need to be aware of the legal standards under which variance applications are to be evaluated by the Board of Appeals. Wisconsin courts have stated that variances are not to be granted routinely. To do so would defeat the purpose of having a zoning ordinance. The courts have also stated that it is the burden of the applicant to show their application meets the required standards.

The Board of Appeals must apply the Town of Sherman ordinance provisions as they are written. The Board's job is not to compromise for a property owner's convenience, but to apply appropriate legal standards to a specific fact situation. ***Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.***

It is not appropriate to contact individual Board of Appeals 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 the application you will be required to:

1. Complete a variance application form and submit an application 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 (three-step test below); and
4. Stake out your lot lines, the proposed building footprint and other property features of your property related to your request so that the Board may inspect the site.

The Board of Appeals may conduct an onsite inspection of the site prior to the public hearing.

You will be required to provide information at the public hearing to show that you qualify for a variance. At the public hearing, you and other interested parties may appear in person or may be represented by an agent or attorney. If neither you nor your agent appears at the public hearing, the Board must deny your request for a variance and your application fee will not be refunded.

Three-Step Test

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

1) **Unnecessary Hardship:**

To qualify for a variance, the Board must find that strict application of the code dimensional standards will result in an unnecessary hardship. Wisconsin case law states that unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. To determine whether this standard is met, the Board will consider the purpose of the zoning ordinance in question, its effects on the property, and the short-term, long-term, and cumulative effects of granting a variance.

The Board will balance public interests in preserving the objectives of the code and private interests in a property in determining which uses are reasonable and whether the code requirements result in an unnecessarily burdensome situation.

An applicant may not claim hardship because of conditions which are self-imposed or created by a prior owner (for example, constructing a deck or shed within setback lines without a permit and then arguing there would be a financial hardship if ordered to remove it.) Courts have also found that decks and similar minor accessory structures are not essential to the reasonable use of a property and are not eligible for variances. The board will ask the applicant to explain what hardship will exist if the variance is not granted.

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

To qualify for a variance, the hardship must be due to a unique physical limitation of the property that is not generally shared with other properties. Examples include steep slopes, wetlands, and ravines. The personal circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby code violations, prior variances or lack of objections from the neighbors do not provide a basis for granting a variance. Minor property limitations that prevent code compliance and are common to a number of properties should be addressed by a code amendment and not a variance.

The Board will ask the applicant to explain what conditions are unique to this property rather than considerations personal to the property owner that result in an unnecessary hardship and that would suggest the variance should be granted.

3) **No harm to public interest:**

A variance may not be granted which results in harm to public interests. In applying this test, the Board will consider the 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 the code 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. Factors to consider include traffic safety, consistency with the Town's long range plan, consistency with sound planning practices, past precedent, and impact on future requests of a similar nature.

The Board will ask the applicant to comment on how they believe the interests of the public or neighbors will be affected by granting or denying the variance request.

Topics to Avoid

The Board is weighing the application, not the applicant. The Board will focus on the effects a variance will have on the land, not on the land owner. Please do not mention that your application should be granted because you are a pillar of the community, well respected, known for integrity, or any other trait designed to get the Board to like you. Variances are not personal decisions – they relate solely to the land. Remember, land ownership changes hands.

In addition, please do not stress the economic benefit of granting the variance. Your proposal may add a large amount to the Town's tax base but the Board cannot consider that as a factor in your favor. If the Board decided variance requests based on the added value to the Town, every variance would be granted and the zoning code would become meaningless.

Appeal

A variance decision may be appealed to Sheboygan County Circuit Court by any aggrieved party within 30 days after the written decision by the Board.

Town of Sherman Variance Application

Applicant (Agent)	Tax ID number
Street Address	CSM Number
City-State-Zip Code	Section, Quarter-Quarter-Section
Telephone	
Property Owner (If different from applicant)	Address of parcels, if assigned; if not, road adjoining parcel and nearest road intersection
Street Address	
City-State-Zip Code	
Telephone	

Name and addresses of owners of property in the town within _____ feet (suggest 1320') of the property for which you seek a variance:

Present Property Use:

Present Property Zoning:

Describe all nonconforming structures and uses on this property:

List any prior variances that have been granted or denied for this property:

List the sections of the ordinance for which you are requesting a variance:

Variations Requested:

**Address the following variance criteria described in the application materials.
(Attach additional sheets if necessary.)**

Unnecessary Hardship

Will denial of the variance request prevent you from using this property for a permitted purpose or render conformity with the ordinance unnecessarily burdensome? Why?

Unique Physical Limitations of Property

What unique features of this property prevent you from complying with the terms of the Zoning Ordinance?

Impact on Public Interest

How would the interest of the public, the fellow residents of the Town of Sherman and your immediate neighbors be affected by granting or denying this variance?

Please provide a scale drawing of the entire property including streams, wetlands, proposed or existing roads, driveways, sanitary septic systems, existing and proposed structures, and easements.

Signing this application is an acknowledgment that you have received and understand the “Guide for application for a Zoning Ordinance Variance” and that you will comply with the requirements for seeking a variance.

Signing this application also acts as consent by you to allow Town representative to walk onto the property to inspect, including taking measurements and photographs.

Signature of owner or authorized agent: _____

Date: _____ Phone # daytime _____ # evening _____

If you are willing to accept notices from the Town by fax or e-mail, please list

fax number _____

e-mail _____