

Oconto County

Planning & Zoning

Variance Application Packet

Variance Packet Includes:

- Checklist
- Variance Application
- Three Step Test

WHAT YOU NEED TO DO PRIOR TO SUBMITTING YOUR VARIANCE APPLICATION:

- Consult Planning & Zoning Staff regarding your proposal
- Complete Variance Application
- Complete Three Step Test
- Submit to Oconto County Planning & Zoning Office
 - Application
 - Three step test document
 - A survey from a registered land surveyor showing the proposed and existing structure and the distance of each at their closest point from side and rear lot lines or ordinary high water mark, centerline, the existing septic system (both the drainfield and the tank), any proposed septic system (both the drainfield and the tank), well location, floodplain and wetland boundaries.
 - \$450.00 Application fee – “Late Filing Fee” is a triple fee.

All applications must be received by the Oconto County Planning & Zoning Office prior to the first of the month in order to be scheduled for the following month’s public hearings. Applications will be reviewed for completeness and valid responses to the questions. Please note that incomplete applications will not be processed.



Oconto County Planning & Zoning

301 Washington St.

Oconto, WI 54153

920.834.6827

Receipt # _____

Application # _____

OCONTO COUNTY PETITION FOR VARIANCE

Note: In order to avoid any delays, please complete all parts of this application. Incomplete applications will not be processed.

Petitioner Information

Owner:

Last Name _____ First Name _____ Phone # _____

Address _____ City _____ State & Zip _____

If you wish to appoint an agent to speak at the hearing, please complete the following:

Agent:

Last Name _____ First Name _____ Phone # _____

Address _____ City _____ State & Zip _____

Property Information

Parcel No. _____ Physical Address _____

Location (Gov. Lot _____ or _____ ¼, _____ ¼), Section _____, T _____ N, R _____ E, Town of _____

Subdivision (CSM - Vol. & Page _____, Lot _____) or (Plat Name _____, Block _____, Lot _____)

Property Zoning District _____

Variance Information

Variance request to Ordinance Section(s) _____ of Oconto County _____ Ordinance

Provide description
of variance proposal:

Please check the type(s) of setback(s) you are applying for a variance from:

- Side Lot (Left)
- Side Lot (Right)
- Road (Centerline)
- Rear Yard
- Ordinary High Water Mark*
- Other (i.e. Height standard)

* Measured to Overhang/eaves

Please enter the distance the proposed structure will be from each of the following at its closest point:

- _____ Side Lot (Left)
- _____ Side Lot (Right)
- _____ Road (Centerline)
- _____ Rear Yard
- _____ Ordinary High Water Mark*
- _____ Other _____

* Measured to Overhang/eaves

Please enter the distance the existing structure is from each of the following at its closest point:

- _____ Side Lot (Left)
- _____ Side Lot (Right)
- _____ Road (Centerline)
- _____ Rear Yard
- _____ Ordinary High Water Mark*
- _____ Other _____

* Measured to Overhang/eaves

The following items must be enclosed in order for the application to be processed:

- ✓ **A survey from a registered surveyor showing the proposed and existing structure and the distance of each at their closest point from side and rear lot lines or ordinary high water mark, centerline, the existing septic system (both the drain field and tank), any proposed septic system (both the drain field and the tank), well location, floodplain and wetland boundaries.**
- ✓ **Three step test document completed.**
- ✓ **\$450.00 application fee (payable to Oconto County Zoning). Late Filing Fee is a triple fee.**

I certify that the information I have provided in this application is true and accurate. Property owner signature is required.

Property Owner Signature _____ Date _____

Agent Signature _____ Date _____

GUIDELINES FOR VARIANCE APPLICATIONS

OCONTO COUNTY BOARD OF ADJUSTMENTS

The Oconto County Zoning Ordinance is adopted and enacted by the Oconto County Board of Supervisors.

The Board of Adjustments is a body that reviews and makes decisions on petitions for variances from the Oconto County Zoning Ordinance. The Board of Adjustments is comprised of five elected supervisors.

The Board of Adjustments general grant of authority is found in Section 59.99, Wis. Stats. as follows:

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice shall be done.

A zoning ordinance cannot anticipate every land use question that will arise in a community. The Board of Adjustment's authority to grant a variance give the ordinance limited flexibility. The Board of Adjustment acts as a quasi-judicial administrative arm of the County Board. It is the Board of Adjustment's duty to preserve the zoning ordinance without modification as far as possible while ensuring substantial justice for the individual. The variance procedure allows the general rules to be varied in response to unusual circumstances which constitute a legal hardship.

Standards Followed by the Oconto County Board of Adjustment In Considering Variance Applications

It is the responsibility of the applicant to provide "proof" that enforcement of the Zoning Ordinance will result in a legal hardship. A variance cannot be granted as a convenience to the property owner.

The legal hardship must come from the Zoning Ordinance. A self-imposed hardship cannot serve as justification for a variance: i.e., the problem was self-created by the action or negligence of the applicant; the applicant commenced work on a project without required permits or had failed to inform himself on permit requirements, ect.

The legal hardship or difficulty stated as the reason why a variance is necessary must be peculiar to the parcel in question and different from that of other area parcels. The applicant for a variance must clearly show the Board that the request is due to the very unusual or unique qualities of his property.

The expenditure of money does not constitute a legal hardship. In other words, the courts do not recognize financial hardship as a basis upon which a Board of Adjustments can grant a variance (the fact that a structure erected in violation of the Zoning Ordinance would be too expensive to move, that an alternative location which would be in compliance with the ordinance might be somewhat more expensive on which to build, etc). The courts have uniformly held that, when a hardship was created by the applicant's own acts, he is not entitled to relief.

Zoning Ordinance violations by others in the area, nonconformity of structures on other properties or other variances given in the area do not automatically entitle an applicant to approval of his variance request. What constitutes a legal hardship and substantial justice is a matter to be determined by the Board from the facts and circumstances of each individual appeal.

In granting variances, the Board may impose special conditions to ensure that there will be no harm to public interests. The board will consider factors such as control of water pollution, protection of spawning grounds, fish and aquatic life, control of building sites, placement of structures and land uses and preservation of shore cover and natural beauty.

A variance will not be granted simply because there is no objection to it or because those who do not object outnumber those who do.

THREE STEP TEST: To qualify for a variance, the applicant must demonstrate that their **property** meets **all three** of the following requirements.

1. Unique physical limitations

Unique physical limitations of the property such as steep slopes, wetlands or parcel shape that limits reasonable use of the property and that are not generally shared by other properties prevents the applicant from developing in compliance with ordinance requirements. **The circumstances of an applicant (growing family, need for a larger structure, poor site planning by the owner or previous owners, 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.

Do unique physical characteristics of your property prevent compliance with the ordinance? Yes No
If yes, please explain the limitations of the parcel in relation to your proposal.

Have you considered alternatives to lessen the impact to setbacks? Explain why a smaller or reconfigured structure cannot be proposed. Show buildable area on a detailed site plan and explain the unique physical limitations that exist, reasons for exceeding buildable area, and why structure size cannot be reduced to meet or lesson setbacks?

2. No harm to public interests

Variances may not be granted which result in harm to public interests. In applying this test, the Board considers the impacts of the proposal and the cumulative impacts of similar projects to the interests of the neighbors, community and the general public.

Reducing road setbacks for placement of structures can have a negative impact on the safety of the traveling public. Will the proposed structure restrict or hinder turnaround areas, reduce areas for a town to efficiently plow snow off of town roads, cause vehicles to park on the town roads, hinder utilities along town road right of way? **It is highly recommended that the applicant contact the local municipality for review of impacts your proposed structure may have to a town road.**

Reducing the shoreland setback is a detriment to maintaining/ preserving a natural shoreland buffer and generates water pollution unless the impacts can be mitigated. These concerns are listed as objectives in the Oconto County Shoreland Zoning Ordinance and include:

- Further the maintenance of safe and healthful conditions and prevent and control water pollution
- Protect spawning grounds, fish and aquatic life
- Control building sites, placement of structures and land uses
- Preserve shore cover and natural beauty

It is well documented that structures placed within the shoreland setback have negative impacts to the public interests of providing for clean water. Stormwater runoff from impervious surfaces (roofs, driveways, paved areas) increases water body temperatures, promotes algae blooms that impair fish & aquatic life, and introduces pollutants (car fluids, sediments) to the waters. Diverting runoff to natural depression areas or creating rain gardens to control runoff from downspouts and driveways can solve some of the water pollution problems.

Describe setback concerns and/or potential mitigation measures and the extent to which they reduce the project impacts to the public’s interests. A shoreland variance will not be granted without a review of the shoreland buffer.

A plan to re-establish or maintain native plants in the shoreland buffer (35 ft landward of the ordinary high water mark) may be required as a condition of any shoreland setback variance that is approved. Please review the [NRCS Bulletin 643A Shoreland Habitat & WI Biology Technical Note 1: Shoreland Habitat](#) for further details.

3. Unnecessary hardship

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 or constructing a detached structure on a vacant lot and then claiming 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. **Convenience for a certain location cannot be justified if other areas of the parcel can conform to setbacks for the structure.** The property owner bears the burden of proving an unnecessary hardship.

For an area (setback) 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 Adjustments must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the effects of a variance on the neighborhood, the community and the public interests. This standard reflects the *Ziervogel* and *Waushara County* court decisions.

Explain unnecessary hardship. If the owner cannot demonstrate an unnecessary hardship, a variance **cannot** be granted.

Please Note: The location of the proposed structure must be staked out with all corners marked prior to the date of the public hearing.

Other required information:

- ✓ Survey by registered surveyor noting property boundaries, location of existing structures such as houses, decks, garages, wells, septic systems, and the proposed structures.
- ✓ Locations and description of **buildable areas** on the parcel and reasons why these areas cannot be utilized for the proposed structure.
- ✓ Additional information (where applicable) floodplain boundaries, ordinary high water mark, wetland boundaries, adjacent property structures and wells, steep slopes.
- ✓ Variance application completed with property owner signature.

Applications will be reviewed for completeness and valid responses to the questions. Incomplete applications will be returned and may not meet the deadlines for processing the application. Hearings are held monthly and applications will not be scheduled in a timely manner if returned for incomplete information. **Please be aware that postponement/rescheduling of a public hearing due to the applicants error in the submittal or absence from the public hearing shall be charged \$175 fee to cover administration costs for re-notice of the public hearing.**