

LAND USE VARIANCE APPLICATION, EXPLANATION, & REQUIREMENTS

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the Board of Adjustment/Appeals (BOA). The BOA is a quasi-judicial body because it functions almost like a court. The BOA's job is not to compromise ordinance provisions for a property owner's convenience, but is 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 (NOTE: PLEASE READ ENTIRE APPLICATION BEFORE PROCEEDING)

At the time of application you will be asked to:

1. **Complete and return pages 2-9 of the application form and the required \$500.00 fee. The fee is non-refundable regardless of approval or denial; and**
2. **Provide detailed plans describing your project AND a current survey (by a WI-licensed surveyor) showing the existing and proposed improvements. Preliminary surveys will not be accepted; the survey must meet all statutory requirements and be filed/recorded with the County. Required items are to be shown by the surveyor on their map, not sketched on a map by applicant; and**
3. **Provide written statements of verifiable facts showing that your project meets the legal criteria for a variance (See 'Three Step Test' in Part B of the application); and**
4. **Stake out lot corners and lines, the proposed building/improvement footprint, and all other features of your property so that the BOA may inspect the site. This shall be done by your surveyor.**

When all 4 above items are complete and submitted to the Land Services Department, the Land Services Department 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 BOA. 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 BOA 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 BOA to make a ruling in your favor. The BOA 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 BOA may not have sufficient evidence to rule in your favor thus resulting in the denial of your application.

In order to appear on the following month's BOA hearing agenda, the complete application with required fee (including all 4 above items) is due by the first Friday of the month. *Example: an application submitted Thursday April 2nd would be heard by the BOA on the first Monday in May.* BOA hearings are only held during the months of April – December on the first Monday of the month at 6:00 pm at the Burnett County Government Center in Siren, WI. No BOA hearings will be held during the months of January – March as usual winter conditions may not allow BOA members to see all site conditions.

LAND USE VARIANCE APPLICATION – Burnett County, WI
Burnett County Board of Adjustment (BOA)

FEE: \$500.00 VARIANCE #: VAR-22-_____ ZONING DISTRICT:_____

PARCEL # (24 digits):_____

RECEIVED STAMP (BELOW):

TAX ID #:_____

LAND SERVICES STAFF ONLY ABOVE THIS LINE

Applicant Complete All Sections Below This Line

Part A: General Information and Alternatives Analysis

(To be completed by the applicant) (Please use additional sheets if necessary)

Property Owner's Name:_____

Applicant's Name:_____

Applicant's Mailing Address:_____

City State Zip

Applicant's Telephone Number:_____

Applicant's Email:_____

If staff has a question about this application, how do you prefer to be contacted? Check one below:

Letter Phone Email

Legal Description:_____

Lot #:_____ CSM Vol._____ Pg._____ OR

Lot #:_____ Block #:_____ Subdivision Name:_____ OR

Gov't Lot #:_____ OR _____ 1/4 _____ 1/4

Section #:_____ Town #:_____ N Range #:_____ W Town of:_____

Attach additional page if needed for lengthy description OR attach a copy of the deed OR attach tax system property page.

Lot Area:_____ ft² and _____ acres

Property Site Address #:_____

Parcel # (24 digits):_____

Tax ID # (1-5 digits):_____

Anticipated Start Date:_____

Describe variance requested: _____

Describe current use and improvements (*Ex. Residential/Recreation; Cabin/garage*):

Provide description and location of all nonconforming structures and uses on the property:

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

Alternatives: (To be completed by the applicant):

Describe alternatives to your proposal such as other locations, designs, and construction techniques. Examples of alternatives would be: reducing the size of request, moving the structure to a different area, or expanding upward instead of laterally. 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.

Provide description of any prior petition for appeal, variance, or conditional use for this parcel:

Type of variance requested (*applicant, check one*):

- 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

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

Part B: Three-Step Test

(Please use additional paper if necessary)

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

1. Unique property limitations (*Item 1 to be completed by the applicant*)

Unique, physical limitations of the property, such as steep slopes or wetlands, which 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. List the unique property limitations:

Do unique physical characteristics of your property prevent compliance with the ordinance? (*Applicant, check YES or NO below.*)

- YES. These items must be shown on the survey map as part of the application.
- NO. A variance cannot be granted.

2. **Unnecessary hardship** (*Item 2 to be completed by the applicant*)

Courts have determined an applicant may not claim unnecessary hardship where conditions were self-imposed or created by a prior owner.

Examples of self-imposed/created issues in which a variance should NOT be granted:

- a. *Excavating a pond on a vacant lot and then arguing that there is no suitable location for a home*
- b. *Constructing a sanitary system in a specific location and then arguing that there is no suitable location for a home or a garage*
- c. *Constructing a building incorrectly or not in the correct location and then arguing that a variance is needed so the structure doesn't have to be modified to make it conforming*

Courts have also determined that economic or financial hardship does not justify a variance.

Examples of economic or financial hardship in which a variance should NOT be granted:

- a. *Grading and retaining walls can be used to make a conforming location for the structure, but it would be more expensive than using a location requiring a variance*
- b. *Constructing a building incorrectly or not in the correct location and then arguing that a variance is needed so that costly modification doesn't have to be done to the structure*

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. List the unnecessary hardship(s):

- 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 BOA 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 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.

Is unnecessary hardship present?
(*Applicant, check YES or NO below.*)

- YES.
- NO. A variance cannot be granted.

3. **No Harm to Public Interests** (*Item 3 to be completed by the applicant*)

A variance may not be granted which results in harm to public interests. In applying this test, the BOA 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 our 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 lot
- Any other public interest issues

When determining whether a harm to public interest exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving no harm to public interest. Explain how no harm to public interest exists:

Burnett County Ordinance purpose (*to be completed by BOA members*):

Purpose(s) of standard from which variance is requested (*to be completed by BOA members*):

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 BOA 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/comprehensive 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.

Part C: Construction Plans/Survey Map *(To be completed and submitted by the applicant)*

Attach construction plans/survey map detailing the following. Plans/map shall be drawn with a scale preferably at 1"=20' or multiples of 10'. Scale shall not exceed 1"=50'. Note scale used on the plans/map. Plans/maps shall be on letter or legal size paper with North being at the top of the page (make sure all items below are shown):

- Property lines, road right-of-ways, and road centerlines including distances to property lines, road right-of-ways and road centerlines for all existing and proposed structures on the parcel
- Show area to be used for the proposed Variance
- All existing uses on parcels adjacent to the parcel for this request
- All existing zoning districts on parcels adjacent to the parcel for this request
- Vegetation proposed to be removed or disturbed
- Ordinary High Water Mark (OHWM) and distances to it from all existing and proposed structures; must show all within 200 ft of structures
- Floodplain and wetland boundaries and distances to them from all existing and proposed structures; must show all within 200 ft of structures
- Dimensions, locations and setbacks of all existing and proposed structures including all decks/porches/walkways/etc; must show dimensions for ALL items
- Sanitary system, drainfield, and well with distances to property lines, OHWM, wetlands, floodplains, existing and proposed buildings
- Location and extent of filling/grading
- Location and type of erosion control measures
- Existing and proposed utilities and utility easements
- Any other construction related to your project
- North arrow

Part D: Provide names and addresses of adjoining property owners

(To be provided by the applicant)

**Adjoiners are all parcels (including vacant parcels) that touch the applicant's parcel, including those across the road and those that only touch at a common property corner. Address for the owner would be their mailing address (where they get their mail) in many cases this may not be the site address.*

Names and addresses of adjoining owners continued (if needed):

Part E: Signature and date

(To be completed by the applicant and owner. If applicant and owner are different, then both need to sign the application.)

I certify that the information I have provided in this application is true and accurate. I agree to permit County officials charged with administering county ordinances or other authorized persons to have access to the above-described premises at any reasonable time for the purpose of inspection. I understand that the variance fee is non-refundable, regardless if the variance is approved or denied. I understand that the fee for this application is only for the variance request and if permits are required for the project that those will require separate fees. I understand that partial or incomplete applications will be returned to the applicant resulting in the application being removed from the hearing agenda, and the submittal deadlines will restart.

Signed _____ (Date) _____
 (Applicant)

Signed _____ (Date) _____
 (Owner)

SUBMIT COMPLETED APPLICATION, MAPS, PLANS, AND FEE TO:

BURNETT COUNTY LAND SERVICES
7410 COUNTY ROAD K, #120
SIREN, WI 54872

APPLICATIONS WILL BE ACCEPTED VIA USPS, ANY STANDARD COURIER, OR IN PERSON. COMPLETE APPLICATIONS WITH ALL REQUIRED SUBMITALS MUST BE RECEIVED BY THE LAND SERVICES DEPARTMENT BY THE DEADLINE. PARTIAL OR INCOMPLETE APPLICATIONS WILL BE RETURNED TO THE APPLICANT. ONLY COMPLETE APPLICATIONS WITH ALL REQUIRED SUBMITALS AND REQUIRED FEE WILL BE INCLUDED ON THE HEARING AGENDA. NO EMAIL OR FAX APPLICATIONS WILL BE ACCEPTED.

ONLY CHECK, MONEY ORDER, OR CASH PAYMENT WILL BE ACCPETED. CREDIT OR DEBIT CARDS ARE NOT ACCEPTED AT THIS TIME. MAKE CHECK PAYABLE TO: BURNETT COUNTY LAND SERVICES

Please call the Land Services Department if you have questions. 715-349-2109

Burnett County, WI ordinances can be found at: <http://www.burnettcounty.com/index.aspx?NID=1043>

Date of staff site visit: _____ Name(s) of site visit staff: _____

Staff comments:
