



## General Application Requirements

<b>Applications will not be accepted until the applicant has met with department staff to review the application and determine if all the necessary information has been provided. All information from the checklist must be provided to the Department to be considered a complete application. Only complete applications will be noticed for a specific hearing date/time.</b>
<input type="checkbox"/> Completed Variance Application Form
<input type="checkbox"/> \$500 application fee (non-refundable), payable to Sauk County LRE
<input type="checkbox"/> Written argument that justifies the need for the variance and addresses the variance standards. The applicant is responsible for proving that an “unnecessary hardship” exists.
<input type="checkbox"/> A scaled site plan of the site and surrounding area, including all buildings and other structures. Also, include proposed addition/structure/location of septic system, well, driveway, property lines, navigable water ways, wetland, floodplains, slopes in excess of 20%, and any other unique limiting feature of the property. All maps and engineering data shall be no larger than 11”x17”.
<input type="checkbox"/> Town Acknowledgement Form

### Variance Standards

#### **Part A: Type of Variance Requested**

- Use Variance – Permits a Landowner to put a property to an otherwise prohibited use.
- Area Variance – provides an increment of relief from the physical/dimensional restrictions of the ordinance, such as building height or setback.

#### **Part B: 3-Part Test**

To qualify for a variance, the applicant must demonstrate that their property meets the following requirements. (Please use additional paper if necessary.)

##### **1 - Unique property limitations.**

Unique property limitations, such as steep slopes, highly erodible soils, wetlands, etc. which are not generally shared by other properties, must prevent compliance with ordinance requirements. The circumstances of an applicant (i.e. growing family or 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. Please list the unique property limitations:

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##### **2 - Unnecessary hardship.**

Courts have determined that an applicant may not claim unnecessary hardship where conditions were self-imposed or created by a prior owner. The Courts have also determined that economic or financial hardship do not justify a variance.

Examples of self-imposed/created issue 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 not suitable location for a home or garage.
- c. Constructing a building incorrectly without the proper permits and then arguing that a variance is needed so that the building does not have to be modified to make it conforming.

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 a structure, but it would be more expensive than using a location requiring a variance.

- b. Constructing a building incorrectly and then arguing that a variance is needed so the costly modification or relocation does not have to be completed.
- c. Arguing that the proposed improvements will add to the Town/County tax base.

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):

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**3 - No Harm to the Public Interest.**

A variance may not be granted which results in harm to the public interest. In applying this test, the impacts of the proposal and the cumulative impacts of other similar projects on the interests of the neighbors, the entire community, and the general public must be examined. The interests are listed as objectives in the purpose statement of the applicable ordinance and Wis. Stats. 56.69(1). Explain the impact of the requested variance on the public interest:

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Certification

I certify by my signature that all information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Sauk County Land Resources & Environment Department to enter my property for the purpose of collecting information to be used as part of the public hearing process. I understand that the variance fee is a non-refundable, regardless if the variance is approved or denied. I understand that the fee for this application is only the variance request and if permits are required for the project that those will require separate application(s) and/or fee(s). 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. I further agree to withdraw this application if substantive false or incorrect information has been included.

Applicant/Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

At the public hearing, the applicant may appear in person or through an agent or an attorney of their choice. The applicant/agent/attorney may present testimony, evidence and arguments in support of the application. All site plans, pictures, etc. become the property of the Land Resources & Environment Department, will remain in the file, and will be public record.

## Variance Procedures and Requirements

### What is a variance?

A variance is a relaxation of a regulation within the zoning ordinance. Requests for variances are reviewed and decided by the Sauk County Board of Adjustment (BOA). The BOA is a quasi-jurisdictional body that functions much like a court, applying rules and laws. It is the BOA's responsibility to ensure that ordinance provisions are not compromised for a property owner's personal convenience. The BOA applies legal criteria provided in state laws, court decisions, and local ordinance provisions to a specific situation. Variances are meant to be an infrequent remedy where an ordinance is found to impose a unique and substantial burden upon a property. Variance should only provide for the minimum relief necessary to overcome the hardship.

### Standards

In order to be granted a variance, the Board of Adjustment must find that certain standards are met, which include:

- 1) Unique Property Limitations;
- 2) Unnecessary Hardship;
- 3) No Harm to Public Interest;
- 4) Spirit and Intent of the Ordinance is Observed and Substantial Justice Done.

The Wisconsin Supreme Court's opinion in State Ex. Rel. Ziervogel v. Washington County Board of Adjustment, found that the property owner has to prove unnecessary hardship utilizing the 1976 Snyder Wisconsin Supreme Court decision. In the 2004 Ziervogel decision, the Supreme Court reaffirmed that the 1976 Snyder standards for determining the existence of an unnecessary hardship stated as "...whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, built or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.". Whether the standard is met depends upon "...a consideration of the purpose of the zoning restriction in question, its effect on the property, and the effect of a variance on the neighborhood and the larger public interest." The hardship must be unique to the property and not self-created. The burden of proving unnecessary hardship remains on the property owner. In the Ziervogel decision, the Supreme Court affirmed the following rules of unnecessary hardship:

1. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner.
2. The hardship cannot be self-created.
3. The Board is to evaluate the hardship in light of the purpose of the zoning restriction at issue.
4. The variance cannot be contrary to the public interest.
5. The property owner bears the burden of proving the unnecessary hardship.

### Process

1. Contact the LRE Department to schedule a meeting to review your potential request.
2. Complete the Special Exception Application and provide all the supplemental items to the LRE Department by the filing deadline.
3. Review such application with the appropriate staff member to determine completeness.
4. If the application is complete, LRE staff will publish notice of your request for a special exception in the County's official newspaper noting the location and time of the required public hearing before the BOA. Neighbors, town officials, and affected state agencies will be notified as well.
5. If the Town chooses to review the special exception request at the Town Planning Commission and Town Board level, you will need to attend such meetings to provide information regarding the request. Please request that copies of minutes/proceedings outlining the Town's recommendation be provided to the LRE Department for the file.
6. A public hearing will be held before the Sauk County Board of Adjustment. Either the property owner or designated agent will need to be present at the hearing to provide testimony regarding the request. The BOA must make a decision based only on the evidence that is submitted to it at the time of the hearing. Failure to provide representation may result in denial or postponement of your request.
7. If the Board of Adjustment grants your special exception request, you must obtain a land use permit from the Land Resources & Environment Department. The permit will be issued if all of the requirements of the Department and any conditions of the BOA have been addressed.
8. If the Board of Adjustment denies your request, the decision will become final unless a written appeal is filed with the Sauk County Circuit Court within 30-days of the date of decision.