

should be addressed by amending the ordinance.¹⁵⁰ For example, an ordinance may, in some cases, be amended to provide reduced setbacks for a subdivision that predates the current ordinance and where lots are not deep enough to accommodate current standards.

3. No Harm to Public Interests

A variance may not be granted which results in harm to public interests.¹⁵¹ In applying this test, the zoning board should review the purpose statement of the ordinance and related statutes in order to identify public interests. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Promoting and maintaining public health, safety, and welfare
- Protecting water quality
- Protecting fish and wildlife habitat
- Maintaining natural scenic beauty
- Minimizing property damages
- Ensuring efficient public facilities and utilities
- Requiring eventual compliance for nonconforming uses, structures, and lots
- Any other public interest issues

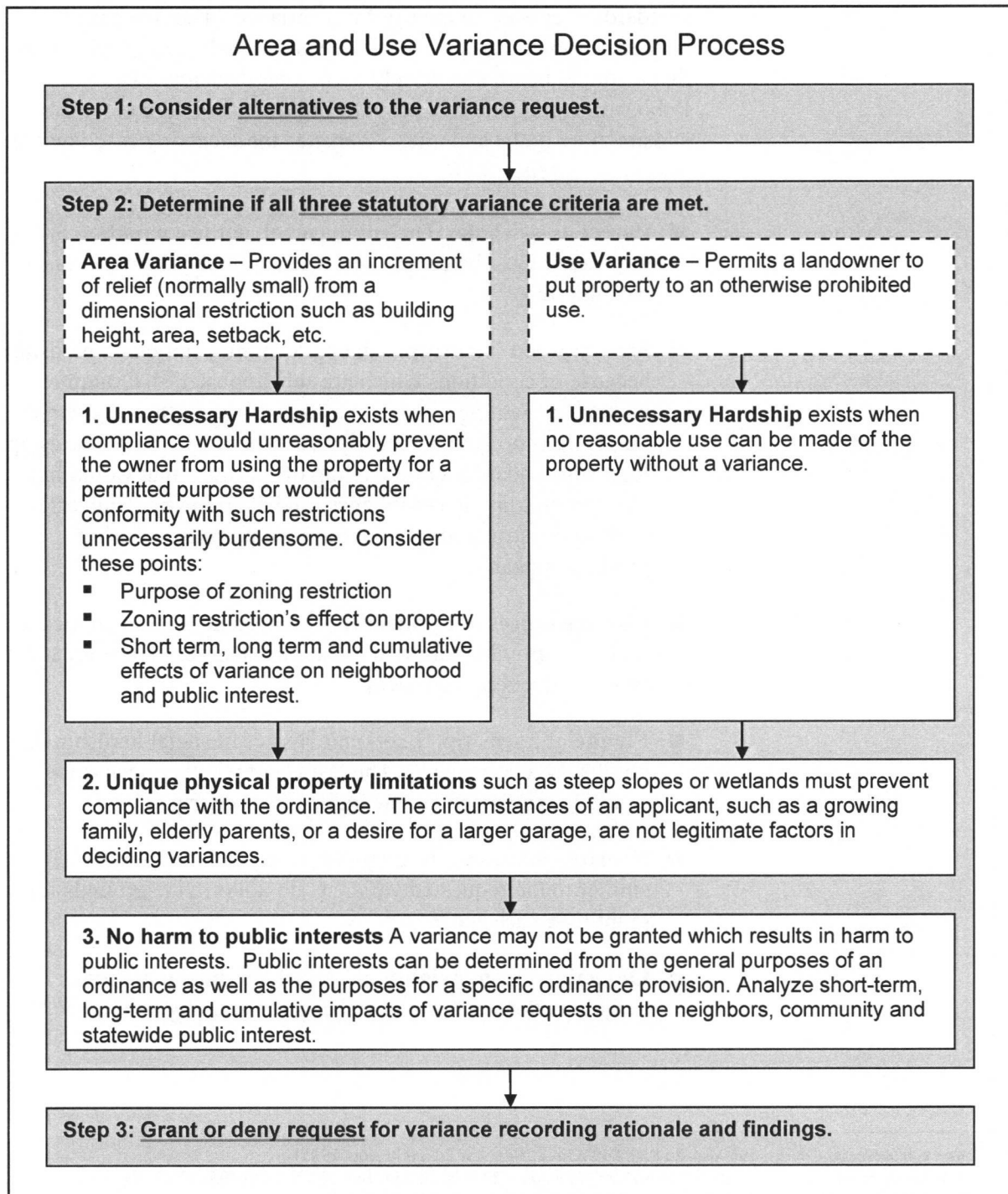
In light of public interests, zoning boards must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state.¹⁵² Review should focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

The flow chart in Figure 25 summarizes the standards for area variances and use variances. Application forms and decision forms reflecting these standards are included in *Appendix D*.

¹⁵⁰ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 256, 469 N.W.2d 831 (1991); *State v. Winnebago County*, 196 Wis. 2d 836, 846, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵¹ *State v. Winnebago County*, 196 Wis. 2d 836, 846-47, 540 N.W.2d 6 (Ct. App. 1995); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 407-8, 577 N.W.2d 813 (1998)

¹⁵² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

Figure 25: Area and Use Variance Decision Process

Additional Standards

Few areas of land use law are as extensively litigated as the standards necessary to qualify for a variance. The rich case law concerning variances provides these additional guiding principles that a zoning board should rely on in their decision-making. Published court decisions provide guidance for board members and are cited in the endnotes. Websites for accessing case law are provided in *Appendix B*.

- **Parcel-as-a-whole.** The entire parcel, not just a portion of the parcel, must be considered when applying the unnecessary hardship test.¹⁵³
- **Self-imposed hardship.** An applicant may not claim hardship because of conditions which are self-imposed.¹⁵⁴ Examples include excavating a pond on a vacant lot and then arguing that there is no suitable location for a home; claiming hardship for a substandard lot after selling off portions that would have allowed building in compliance; and claiming hardship after starting construction without required permits or during a pending appeal.
- **Circumstances of applicant.** Circumstances of an applicant such as a growing family or desire for a larger garage are not a factor in deciding variances.¹⁵⁵
- **Financial hardship.** Economic loss or financial hardship do not justify a variance.¹⁵⁶ The test is not whether a variance would maximize economic value of a property.
- **Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.¹⁵⁷
- **Objections from neighbors.** A lack of objections from neighbors does not provide a basis for granting a variance.¹⁵⁸

¹⁵³ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵⁴ *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 163, 133 N.W.2d 795 (1965); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 479, 247 N.W.2d 98 (1976).

¹⁵⁵ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

¹⁵⁶ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989).

¹⁵⁷ *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Div. 1940)

¹⁵⁸ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

- **Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts.¹⁵⁹

Are there any limits on granting a variance?

Minimum variance allowed

The board may grant only the minimum variance needed.¹⁶⁰ For a use variance, the minimum variance would allow reasonable use, whereas for an area variance, the minimum variance would relieve unnecessary burdens. For example, if a petitioner requests a variance of 30 feet from setback requirements, but the zoning board finds that a 10-foot setback reduction would not be unnecessarily burdensome, the board should only authorize a variance for the 10-foot setback reduction.

Conditions on development

The board may impose conditions on development (mitigation measures) to eliminate or substantially reduce adverse impacts of a project under consideration for a variance. Conditions may relate to project design, construction activities, or operation of a facility¹⁶¹ and must address and be commensurate with project impacts (*review the essential nexus and rough proportionality tests in Chapter 14*).

Specific relief granted

A variance grants only the specific relief requested (as described in the application and plans for the project) and as modified by any conditions imposed by the zoning board. The variance applies only for the current project and not for any subsequent construction on the lot. Referring to Figure 26 on the next page, if the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.

Variances do not create nonconforming structures

If a variance is granted to build or expand a structure, it does not give that structure nonconforming structure status. This relates to the previous point that variances only provide specific relief. In

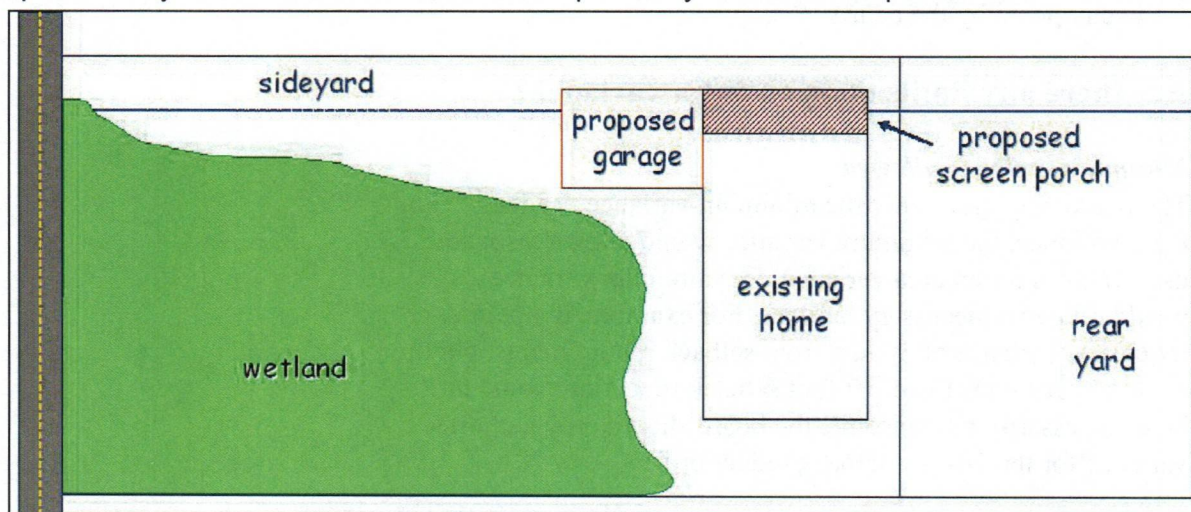
Nonconforming Structure – A building or other structure, lawfully existing prior to the passage of a zoning ordinance or ordinance amendment, which fails to comply with current dimensional standards of the ordinances.

¹⁵⁹ *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); see also *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998).

¹⁶⁰ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, s. 20.86, pp. 624-5

¹⁶¹ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, ss. 20.70 and 20.71, pp. 587-95

If the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.



Variance transfers with the property

Because a property rather than its owner must qualify for a variance to be granted (unique property limitations test), a variance transfers with the property to subsequent owners.¹⁶²

Are multiple variances allowed?

Multiple variances for a single project

In some cases, a single project may require more than one variance to provide reasonable use of a property. The 3-step test should be applied to each variance request in determining whether relief can be granted by the zoning board.

Sequential variances

In other cases, original development of a property may have been authorized by variance(s). The owner later requests an additional variance. Generally, the later request should be denied since, in granting the original variance, the zoning board was required to determine that a variance was essential to provide reasonable use of the property or that not granting the (area) variance would have been unreasonably burdensome in light of the ordinance purpose. The board cannot subsequently find the opposite unless there

¹⁶² *Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 523-24, 340 N.W.2d 558 (Ct. App. 1983)

have been significant changes on the property or on neighboring properties. A later variance could also be granted if the written purpose of the zoning designation for which an area variance was sought significantly changed, thereby allowing the variance to qualify under the unreasonably burdensome standard.

What is the process for appealing a variance decision?

A variance decision may be appealed to circuit court by any aggrieved person, taxpayer, officer or body of the municipality within 30 days of filing of the decision in the office of the board.¹⁶³ (See Chapter 17 *Judicial Appeal of Zoning Board Decisions*.)

Why are the standards for area variances different from those of use variances?

The law treats area and use variances differently because they “serve distinct purposes,” “affect property rights in distinct ways,” and “affect public and private interests differently.” According to the *Ziervogel* decision, the adverse impacts of an area variance are thought to be less than those of a use variance. Furthermore, the “no reasonable use” standard associated with use variances leaves zoning boards “with almost no flexibility” and eliminates the statutory discretion of zoning boards to decide variances.

Figure 27: Land Division Variances... Creatures of a Different Color

So far our discussion has focused only on zoning variances. As zoning boards may be asked to decide land division variances (including subdivision ordinances), here are a few salient points:

- Subdivision variances are not the same as zoning variances.
- There is no Wisconsin law addressing land division variances.
- A local unit of government may allow variances to locally-determined land division standards. In this case they must determine the process and standards, and should include them in the land division or subdivision ordinance.
- Local units of government may choose to not allow land division variances.
- A local unit of government is not allowed to provide a variance to a state-mandated standard.
- Due process, including a hearing with public notice is required for land division variances.

¹⁶³ Wis. Stat. § 59.694 (10)

AREA VARIANCES AND USE VARIANCES

What is the difference between an area variance and a use variance?

It may not always be easy to determine if an applicant is seeking an area variance or a use variance. It is arguable that a large deviation from a dimensional standard, or multiple deviations from several dimensional standards on the same lot, may constitute a use variance instead of an area variance. For example, allowing significantly reduced setbacks could have the same effect as changing the zoning from one residential zoning district that requires significant setbacks and open space to a second residential zoning district that has minimal setbacks and open space.

Based on majority opinions of the Wisconsin Supreme Court,¹⁶⁴ it appears that, in order to draw the line between area variances and use variances, zoning boards should consider the degree of deviation from each dimensional standard for which a variance is sought in order to determine if the requested variance would “permit wholesale deviation from the way in which land in the [specific] zone is used.”

¹⁶⁵ A proactive community seeking to consistently differentiate between area variances and use variances could adopt an ordinance provision similar to the following:

Unless the board of adjustment finds that a property cannot be used for any permitted purpose, area variances shall not be granted that allow for greater than a ____% (or ____ foot) deviation in area, setback, height or density requirements specified in the ordinance.

Why are use variances discouraged?

Wisconsin Statutes do not specifically prohibit use variances. However, courts recognize that they are difficult to justify because they may undermine ordinance objectives and change the character of the neighborhood.¹⁶⁶ Some Wisconsin communities prohibit use variances in their ordinances. 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, none of the uses allowed as permitted or conditional uses in the current zoning district are feasible for the property. This circumstance is highly unlikely.

- **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.**

When making map or text amendments to the zoning ordinance, elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses and may undermine neighborhoods and the goals established for them in land use plans and ordinances. Towns also have meaningful input (veto power) on zoning amendments to general zoning ordinances.

¹⁶⁴ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

¹⁶⁵ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁶⁶ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 412 fn. 10, 577 N.W.2d 813 (1998); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 473, 247 N.W.2d 98 (1976).

Accommodations for the Disabled

Chapter

16

The Americans with Disabilities Act (ADA) requires local governments to make “reasonable accommodations” (modifications or exceptions) to rules, policies, practices, or services when necessary to afford persons with disabilities equal access to public accommodations such as restaurants, retail establishments, or other businesses normally open to the public. Similarly, the federal Fair Housing Act, and more specifically, Wisconsin’s Fair Housing Law¹⁶⁷ requires local governments to make reasonable accommodations to provide equal access to housing for persons with disabilities. These laws must be considered when making local land use and zoning decisions, but do not specifically preempt or invalidate local zoning.

In many instances, local zoning regulations are designed to accomplish public health and safety goals and appear to be neutral, but may in fact adversely impact individuals with disabilities. Consider for example, the case of a zoning ordinance that requires homes to be set back twenty feet from the street to ensure the visibility and safety of passing vehicles and pedestrians. If an existing home is built to the setback line, installing a ramp to enable a person with a disability to enter their home would be impermissible without a modification or exception. In such

¹⁶⁷ Wis. Stat. § 106.50 and Wis. Admin. Code § DWD 220

cases, local governments are required to make reasonable accommodations to prevent the discrimination of persons with disabilities.

What is a “reasonable accommodation”?

What constitutes a reasonable accommodation must be made on a case-by-case basis and depends on the facts of the situation. A reasonable accommodation might entail modifications to existing ordinances, regulations or policies, or a waiver of such requirements for persons with disabilities. If a requested modification imposes an undue financial or administrative burden on a local government or if the modification fundamentally alters the local government’s land use or zoning scheme, it is not considered a “reasonable” accommodation and the local government is not required to meet that request.¹⁶⁸

When considering the extent to which a modification is reasonable (for example, how much of setback reduction should be allowed), local governments may wish to refer to ADA standards. Although these requirements do not apply to housing, they may provide guidance in terms of how large of a ramp or other structure is generally necessary to afford accessibility.

What is the recommended approach for providing reasonable accommodations?

Communities use a variety of approaches to provide reasonable accommodations for persons with disabilities—common tools include variances, conditional use permits, special exceptions, permitted uses and waivers of zoning regulations. Strengths and weaknesses associated with each of these tools are considered in turn.

Variance

Granting a variance requires the finding of three conditions: unnecessary hardship, unique property limitations, and no harm to public interest. Applicants must satisfy all three requirements in order to be granted a variance, even in the case of persons with disabilities. While not illegal, we do not recommend the variance approach for several reasons. First, the physical limitations of a

¹⁶⁸ Group Homes, Local Land Use, and the Fair Housing Act. Joint Statement of the Department of Justice and the Department of Housing and Urban Development. Available: http://www.usdoj.gov/crt/housing/final8_1.htm. Retrieved 5-9-06.

disabled applicant do not substitute for the physical limitations of the property.¹⁶⁹ Second, a hardship cannot be self-created. Since the need for a variance arises from an applicant's physical disability it is often difficult to justify both the unnecessary hardship and unique property limitations tests. If the variance technique is considered, applicants should be encouraged to find a suitable site arrangement that does not necessitate the variance (for example, constructing a ramp to the side door rather than the front door).

Conditional Use/Special Exception

Granting a conditional use or special exception is also commonly used to accommodate persons with disabilities. In particular, communities utilize these tools frequently to allow group homes, which is an acceptable use of the technique.¹⁷⁰ In the case of physical or dimensional requests, additional consideration should be given to the use of this technique. First, many communities define conditional uses to include only uses of the property, not physical or dimensional requirements. Second, much like a variance, a conditional use "runs with the property," meaning all subsequent property owners are entitled to continue the use or exception subject to any limitations specified at the time of granting. If the public purpose of enforcing the regulation is so great that the accommodation should be discontinued after the disabled person vacates the property, the zoning administrator may impose a condition to that effect or should consider using an altogether different technique.

Permitted Use/Waiver of Zoning Restrictions

A technique that many communities find works very well for granting reasonable accommodations is the use of an administrative permit or simple waiver of zoning restrictions made by the zoning administrator. Barron County includes the following language in their local zoning code to accomplish this purpose:¹⁷¹

¹⁶⁹ Sawyer County Zoning Bd. v. Wisconsin Dept. of Workforce Development, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App., 1999) involves a request for a variance to accommodate a person with a disability. This case reiterates the unique property limitations standard found in State v. Kenosha County Bd. of Adj., 218 Wis. 2d 396, 413-14, 577 N.W.2d 813, 821-22 (1998).

¹⁷⁰ Many local governments allow group homes as a conditional use. This is a valid use of this procedure, assuming group homes are not discriminated against or treated less favorably than groups of non-disabled persons. For a case regarding conditional use permits see State ex rel. Bruskewitz v. City of Madison, 2001 WI App 233; 248 Wis. 2d 297; 635 N.W.2d 797.

¹⁷¹ Barron County Code of Ordinances, Chapter 17: Zoning, Land Divisions, Sanitation 17.74(5)(h). Available: http://www.co.barron.wi.us/forms/zoning_landuse_ord.pdf. Retrieved 5-10-06.

The County Zoning Administrator will use a zoning permit that waives specified zoning ordinance requirements, if the administrator determines that both of the following conditions have been met.

- a. The requested accommodation (i.e., the requested waiver of zoning restrictions), or another less-extensive accommodation, is:*
 - 1. Necessary to afford handicapped or disabled persons equal housing opportunity or equal access to public accommodations, and*
 - 2. The minimum accommodations that will give the handicapped or disabled persons adequate relief.*
- b. The accommodation will not unreasonably undermine the basic purposes the zoning ordinance seeks to achieve.*

Other Remedies

If no procedure is specified for accommodating persons with disabilities, these persons may request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria outlined for reasonable accommodations.

May local governments impose conditions on accommodations for the disabled?

Local governments may require that modifications granted to accommodate disabilities be removed after no longer necessary. For example, when authorizing a building addition or structure (such as a ramp) to a home, the zoning administrator may require that the alteration be removed after the disabled person vacates the property. Barron County requires applicants to sign and record an affidavit with the local register of deeds outlining conditions and removal procedures associated with allowing accommodations for the disabled. In other circumstances, communities may wish to allow ramps and other structures that serve the disabled to remain for a specified time period (eg. six months) to encourage other handicapped individuals to inhabit the property while at the same time avoiding some of the time and expenses involved in constructing handicap accessible structures.

Section IV – Review

Keywords

- Administrative decision
- Quasi-judicial decision
- Judicial decision
- Legislative decision
- Stay
- Statute
- Administrative rule
- Local code
- Administrative appeal
- Judicial appeal
- Permitted use
- Conditional use
- Special exception
- Variance
- Area variance
- Use variance
- Reasonable accommodation

Test your Knowledge (answers on page 109)

Chapter 12 – Discretion Associated with Zoning Decisions

- 1) What are the three discretionary levels of decision-making?
Provide examples of each.
- 2) Name four of the five major types of zoning decisions.
- 3) Which zoning decisions are typically made by the zoning board?

Chapter 13 – Administrative Appeals

- 4) Name three guidelines for determining the intent of ambiguous ordinances.
- 5) Name five guidelines for interpreting the text of ordinances.

Chapter 14 – Conditional Uses/Special Exceptions

- 6) Who may decide a conditional use permit?
- 7) What is the difference between performance and design standards?
- 8) What are the tests for determining whether conditions are legally acceptable?

Chapter 15 – Variances

- 9) What is the difference between an area variance and a use variance?
- 10) What are the three standards for granting a variance?

Chapter 16 – Accommodations for the Disabled

- 11) What is the process for providing reasonable accommodations for the disabled?

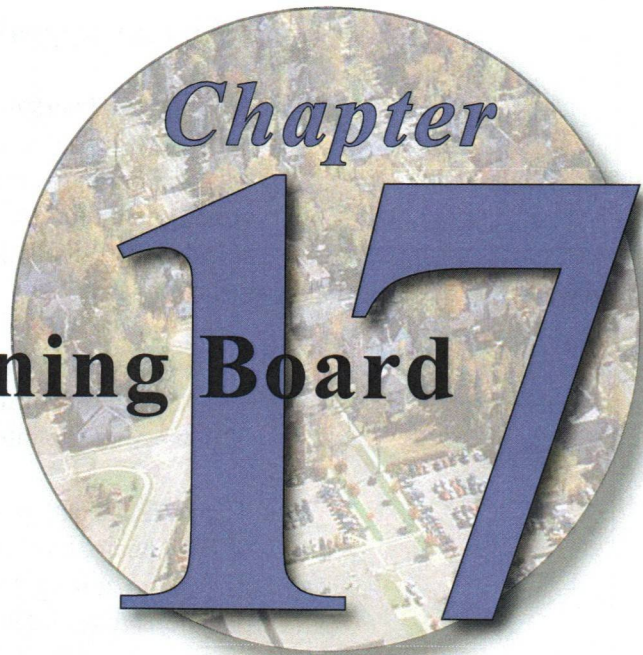
Answers

- 1)
 - a. Legislative decisions – most discretion (policies, ordinances)
 - b. Quasi-judicial decisions – (variances, conditional use permits, administrative appeals)
 - c. Administrative decisions – least discretion (simple permits)
- 2)
 - a. Permitted uses
 - b. Conditional uses
 - c. Variances (area or use)
 - d. Amendments (text or map)
 - e. Appeals (administrative or judicial)
- 3)
 - a. Administrative appeals
 - b. Variances
 - c. Conditional uses (if authorized by local ordinance)
- 4)
 - a. Scope or jurisdiction
 - b. Context
 - c. Subject matter
- 5)
 - a. Plain meaning rule
 - b. Harmonizing
 - c. Conflicting provisions
 - d. No surplus language
 - e. Value of testimony
- 6) The governing body, plan commission/committee, or zoning board as specified by local ordinance
- 7)
 - a. Performance standards state the expected results and allow landowners to use a variety of techniques custom-tailored to the site to achieve those results
 - b. Design standards state specific requirements (less flexible but easier to administer)
- 8)
 - a. Rough proportionality
 - b. Essential nexus

Section IV – Decisions of the Zoning Board

- 9)
 - a. Area variances allow small deviations from dimensional requirements such as setbacks, heights, etc
 - b. Use variances allow uses that are prohibited in the zoning district
- 10)
 - a. Unnecessary hardship - defined as “no reasonable use” for use variances and “unnecessarily burdensome in light of ordinance purposes” for area variances
 - b. Unique property limitations
 - c. No harm to public interest
- 11) We recommend including language in your local zoning ordinance to grant reasonable accommodations through a simple permit or waiver of restrictions issued by the zoning administrator. Variances and conditional uses may also be appropriate in some cases.

Appeal of Zoning Board Decisions



Zoning board decisions may be appealed to circuit court. When reviewing zoning board decisions on appeal, the circuit court generally reviews the record using certiorari standards. To minimize having their decisions overturned by the courts, zoning boards should understand and apply the certiorari standards to create an accurate and complete record for each of their decisions. When making decisions, zoning boards and the courts are governed by rules in local ordinances, state statutes, and the constitution.

What is an appeal?

For the purposes of this chapter, an appeal is the submission of a decision made by a zoning board to a circuit court for review to determine whether the board erred and to affirm, reverse, or remand the decision.¹⁷² *Chapter 13* discusses administrative appeals which occur when decisions made by zoning administrators or plan commissions are appealed to the zoning board.

¹⁷² *Black's Law Dictionary*, 2nd pocket edition, 2001, 38; Klein, Bobbie, Attorney and Laura Dulski, Attorney. "Filing an Appeal: A Citizen's Guide to Filing an Appeal in the Wisconsin Court of Appeals." June 1991 (Revised effective January 1, 2004). Available at <http://www.courts.state.wi.us/ca/citizens.pdf>

Who may appeal zoning board decisions?

Standing - the status required by law to allow a person or body to appeal a decision.

An aggrieved person, taxpayer, municipal officer, or municipal body may appeal a zoning board decision to circuit court.¹⁷³ A “person” includes partnerships, corporations, associations, and governmental units.¹⁷⁴ These people and bodies are said to have **standing** to appeal zoning board decisions. The test for standing has two parts:

1. whether the decision of the agency directly causes injury to the interest of the petitioner, and
2. whether the interest asserted is recognized by law.¹⁷⁵

The DNR, because of its role as trustee of the navigable waters of Wisconsin, has standing to appeal shoreland, wetland, and floodplain zoning decisions.¹⁷⁶ The DNR has standing to appeal decisions that violate the public trust and in fact, has a duty to appeal decisions that do not comply with shoreland zoning administrative rule standards.¹⁷⁷

How long does a person have to appeal a zoning board decision?

A person has 30 days after the filing of the decision in the office of the zoning board to appeal a decision.¹⁷⁸ In the absence of zoning board by-laws defining what it means to “file the decision,” the appeal period begins when the decision is physically filed in the office of the zoning board. The 30-day appeal period runs from the filing of the original decision and is not extended by filing a motion to reconsider unless the motion raises a new issue.¹⁷⁹ In

¹⁷³ Wis. Stat. §§ 59.694(10) & 62.23(7)(e)10. The municipal law and tax sections of the statutes are pretty clear in distinguishing between a resident (which can include a renter) and taxpayer (used in this context as a “taxpayer of the municipality,” which generally refers to a property taxpayer. While there may be an argument that a renter is a taxpayer in a county which collects a county sales tax, it’s questionable that the term taxpayer used in this section of the statute was intended to include renters--- but rather, a person who pays property taxes directly to the municipality. A renter may fit within the term “aggrieved person”, if the decision affects the property that they are renting; *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986) states residents had appeal rights even though they did not appear at planning and zoning committee hearings because statutes provide that persons aggrieved, not parties, have a right to appeal.

¹⁷⁴ Wis. Stat. § 990.01(26)

¹⁷⁵ *Mendonca v. DNR*, 126 Wis. 2d 207, 376 N.W.2d 73 (Ct. App. 1985); *Kammes v. State, Mining Inv. & Local Impact Fund Bd.*, 115 Wis. 2d 144, 340 N.W.2d 206 (Ct. App. 1983).

¹⁷⁶ *State ex rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992)

¹⁷⁷ Wis. Admin. Code ch. NR 115; *Just v. Marinette County*, 56 Wis.2d 7, 201 N.W.2d 761 (1972)

¹⁷⁸ Wis. Stat. §§ 59.694(10) & 62.23(7)(e)10

¹⁷⁹ *Bettendorf v. St. Croix County Bd. of Adjustment*, 188 Wis. 2d 311, 525 N.W.2d 89 (Ct. App. 1994)

one case in which a zoning board first issued a tentative decision¹⁸⁰ and after a subsequent public hearing on the case issued a more complete decision, the court determined the 30-day appeal period began after the final zoning board decision.¹⁸¹

What must be done within the 30 day time period to appeal a zoning board decision?

A lawsuit must be filed in circuit court seeking **certiorari** review of the zoning board decision. In a certiorari lawsuit, the person or body with standing requests that the circuit court issue a **writ** requiring the zoning board to submit the record of their decision to the court. The request to the circuit court must identify which certiorari standards the decision did not meet, but does not need to make a full argument describing all of the reasons they feel the zoning board decision is insufficient.

Certiorari - A writ from a higher court to a lower court (or zoning board) requesting a transcript of the proceedings of a case for review.

If a certiorari lawsuit is filed, what is the zoning board required to do?

The board must submit the transcript of the proceedings of the decision (the record) or certified or sworn copies of the record to the circuit court.¹⁸²

Writ - A written order issued by a court requiring specific action.

When a zoning board decision is pending before the circuit court, what may the zoning administrator and zoning board do?

When the zoning board decision is pending before the court, the court has exclusive jurisdiction over the dispute, and neither the zoning administrator nor the zoning board may reevaluate their decision until the court relinquishes that jurisdiction. To allow otherwise would encourage conflicting and competing decisions of courts and administrative agencies.¹⁸³

¹⁸⁰ *Miswald v. Waukesha County Bd. of Adjustment*, 202 Wis.2d 401, 550 N.W.2d 434 (Ct. App. 1996); first decision stated that the zoning board's decision may be taken up at the next hearing and the decision may be subject to change and modification.

¹⁸¹ *Miswald v. Waukesha County Bd. of Adjustment*, 202 Wis.2d 401, 550 N.W.2d 434 (Ct. App. 1996)

¹⁸² Wis. Stat. §§ 59.694(10), 62.23(7)(e)10 & 781.03

¹⁸³ *Mills v. Vilas County Bd. of Adjustment*, 2003 WI App 66, 261 Wis.2d 598, 660 N.W.2d 705

What happens to the construction project if the zoning board decision is appealed?

Stay - To delay or stop the effect of an order, by legal action.

A zoning board decision is not automatically **stayed** by filing an appeal with the court.¹⁸⁴ For instance, construction may go forward if authorized by a board decision. However, upon petition, the court may find cause to issue a **stay**.

What decisions may a circuit court make on appeal?

Court review of a zoning board decision is highly deferential to the board,¹⁸⁵ with the court presuming the decision of the board is correct and valid when reviewing it by certiorari.¹⁸⁶ Even if the court would not have made the same decision, it will uphold the zoning board's decision if the decision is supported by any reasonable view of the evidence. However, the zoning board decision must be consistent with the law and based on evidence in the record, not on its attitude toward the applicant, the proposal or the zoning ordinance.¹⁸⁷

Courts may interpret ordinance language de novo if the language is similar to that used in communities across the state.¹⁸⁸ For instance, after the Town of Saukville decided on a conditional use permit that included their interpretation of whether "mineral extraction operations" included "blasting and crushing," the Wisconsin Supreme Court interpreted these terms de novo. The rationale for this decision is that one county agency's interpretation of the language in a single case should not be controlling or persuasive for the many other counties that have ordinances with the same or similar language.¹⁸⁹ Note that the court did not hear the entire conditional use permit anew.

Remand - to send a case back to a court or original decision-making body from which it came for

The court may wholly or partly affirm, reverse, or modify the decision appealed.¹⁹⁰ The court, in overturning a decision, will typically send the case back to the board, or **remand** it, for further proceedings consistent with the court's opinion. Courts may

¹⁸⁴ Wis. Stat. §§ 59.694(10) & 62.23(7)(e)10

¹⁸⁵ *Clark v. Waupaca County Bd. of Adjustment*, 186 Wis. 2d 300, 519 N.W.2d 782 (Ct. App. 1994)

¹⁸⁶ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514; *Nielsen v. Waukesha County Bd. of Supervisors*, 178 Wis. 2d 498, 511, 504 N.W.2d 621 (Ct. App. 1993)

¹⁸⁷ *Schalow v. Waupaca County*, 139 Wis. 2d 284, 407 N.W.2d 316 (Ct. App. 1987)

¹⁸⁸ *Marris v. Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993); *Weber v. Town of Saukville*, 209 Wis. 2d 214, 223-4, 562 N.W.2d 412 (1997)

¹⁸⁹ *Bd. of Regents v. Dane County Bd. of Adjustment*, 2000 WI App 211, 238 Wis. 2d 810, 618 N.W.2d 537

¹⁹⁰ Wis. Stat. § 59.694(10)

remand decisions to the zoning board for workload or process-related reasons, including:

1. If they did not, local zoning boards might be tempted to go along with public opinion on difficult or controversial decisions rather than applying the legal standards governing zoning boards, thereby leaving the unpopular decisions to the circuit court.
2. Circuit courts do not have the time to hear numerous local zoning appeals that are the responsibility of local zoning boards.
3. Local zoning boards learn correct procedure and decision making standards if they revisit decisions where the court disagreed and must decide them in ways consistent with the instructions that accompany a remand from circuit court.

There is wide variability in the detail and direction provided by the court when it remands decisions to the zoning board. It is very helpful when the court clarifies whether the zoning board is to conduct a de novo hearing or whether they are only allowed to address the issue the court decided on. Typically, a zoning board only collects additional evidence on remand when the court finds that the evidence in the record is insufficient to support their decision or if the decision standards have changed.

Zoning boards should understand and apply the certiorari standards in all of their decisions to minimize having their decisions overturned by the courts.

May the circuit court take additional evidence?

While state law allows circuit courts to take evidence if necessary to properly decide a matter,¹⁹¹ this seldom happens. Due to the three political and workload reasons described above, courts often remand decisions back to the zoning board with instructions if they do not provide sufficient evidence.

While there is not a complete list of circumstances that might justify the circuit court to take evidence, courts have concluded that a reviewing court may decide to take additional evidence in the following circumstances:

- When the record before the zoning board is incomplete because the aggrieved party was refused an opportunity to be fully heard or the board excluded relevant evidence.
- When good and sufficient cause is shown for the failure to have offered the evidence to the board.

¹⁹¹ Wis. Stat. § 59.694(10)

- When the record presented to the circuit court does not contain all the evidence actually presented to the zoning board.
- When the zoning board's record fails to present the hearing in sufficient scope to determine the merits of the appeal.
- When new evidence is discovered after the zoning board's proceedings were closed, although the circuit court may remand to the board to consider the new evidence first.¹⁹²

If the circuit court does not take additional evidence, what standards does the court use in reviewing zoning board decisions?

The circuit court reviews the record under the traditional standards of common law certiorari listed on page 117.¹⁹³ We recommend that zoning boards understand and apply the same certiorari standards in all of their decisions to minimize having their decisions overturned by the courts. The circuit court may not substitute their discretion for the discretion of the zoning board.¹⁹⁴

¹⁹² *Klinger v. Oneida County*, 149 Wis.2d 838, 440 N.W.2d 348 (1989).

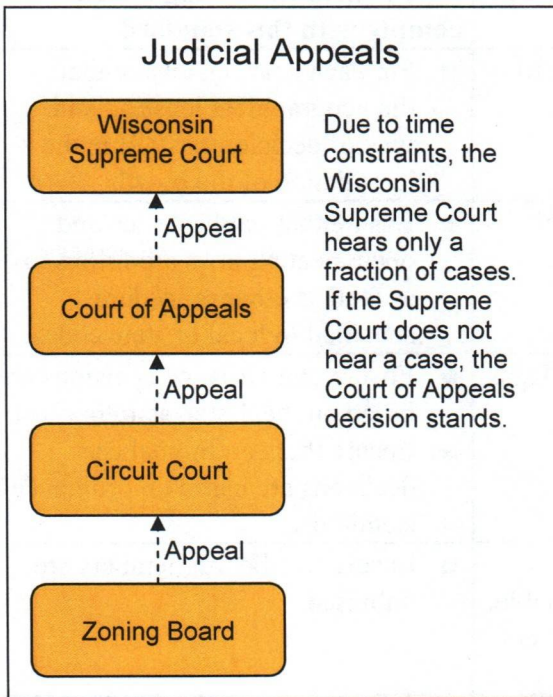
¹⁹³ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514

¹⁹⁴ *Clark v. Waupaca County Bd. of Adjustment*, 186 Wis. 2d 300, 519 N.W.2d 782 (Ct. App. 1994); *Klinger v. Oneida County*, 149 Wis.2d 838, 440 N.W.2d 348 (1989)

Figure 28: Certiorari Review Standards

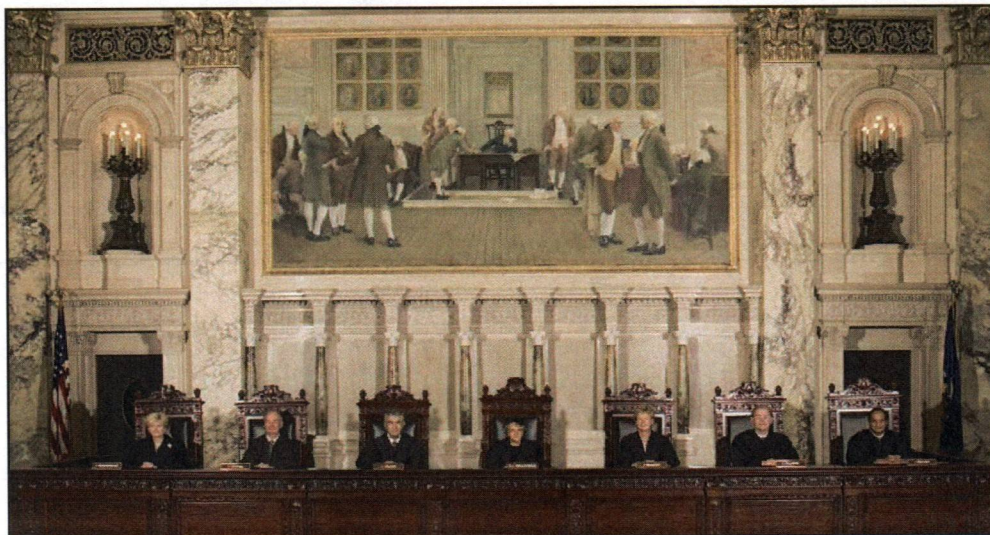
Standard	Questions the court will ask when reviewing a BOA decision	Tips to help the zoning board comply with this standard
1. Jurisdiction	Did the board have the authority to make this decision?	■ For each hearing, ensure that the geographical location and type of decision are within the jurisdiction of the board.
2. Proper procedures	Did the board follow proper legal procedures?	■ Ensure that public notice and open meeting laws are followed as well as other procedures specified in local or state codes.
3. Proper legal standards	Did the board follow the proper legal standards?	■ Ensure that variance decisions are based on the 3-step statutory test. ■ Ensure that conditional use decisions are based on ordinance standards.
4. Unbiased decision-makers	Was the zoning board's action arbitrary, oppressive or unreasonable, and representative of its will and not its judgment?	■ Ensure that board members are unbiased
5. Substantial evidence	Could a fair and reasonable person have reached the same conclusion as the zoning board based on the facts in the record?	■ Make sure that all evidence, including that from site inspections, is included in the record. ■ Ensure that the decision explains the reasons why the board feels each decision standard was or was not met and specifies which evidence supports each part of their decision.

Figure 29: Common Route for Appealing a Zoning Board Decision



Can zoning board decisions be appealed beyond circuit court?

Yes, there are multiple levels of appeal possible. In the most common route of appeal, the zoning board decision is first appealed to the circuit court. The circuit court decision can be appealed to the court of appeals, which must either take the case or ask the Wisconsin Supreme Court to take the case directly.¹⁹⁵ If the court of appeals issues a decision, its decision can be appealed to the Wisconsin Supreme Court, which hears only a small fraction of the cases sent to it.¹⁹⁶ For a full range of appeal routes, see the diagram on the Wisconsin Supreme Court webpage.¹⁹⁷



Wisconsin Supreme Court. Photo courtesy of Bob Rashid Photography.

¹⁹⁵ Wisconsin Supreme Court website, <http://www.courts.state.wi.us/about/organization/moves.htm>

¹⁹⁶ The Wisconsin Supreme Court receives about 1,000 petitions for review each term, and agrees to hear about 100 of these cases. Wisconsin Supreme Court, 2000, <http://www.courts.state.wi.us/about/organization/moves.htm>

¹⁹⁷ <http://www.courts.state.wi.us/about/organization/moves.htm>

Section V – Review

Keywords

- Certiorari
- Writ
- Stay
- Remand

Test Your Knowledge (answers on page 120)

Chapter 17 - Appeal of Zoning Board Decisions

- 1) How long does a person have to appeal a decision made by the zoning board?
- 2) What are the five certiorari standards that zoning board decisions must meet to be upheld?
- 3) Do the circuit courts take additional testimony related to zoning board decisions?
- 4) When a court overturns a zoning board decision, why do they typically remand the decision to the zoning board?

Answers

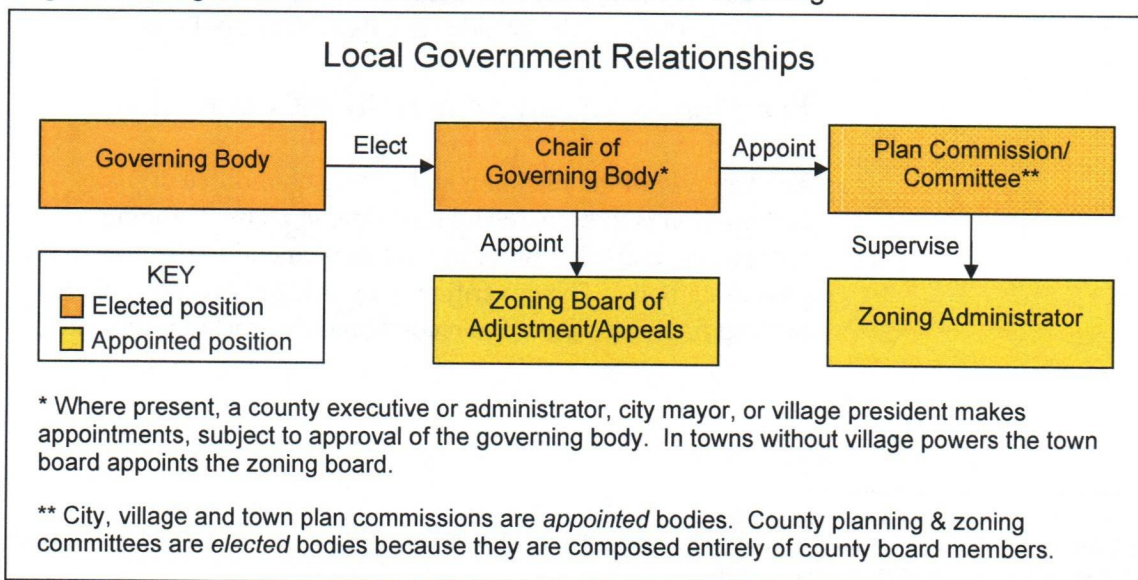
- 1) 30 days after the filing of the decision in the office of the board.
- 2)
 - a. Jurisdiction – geographic and subject matter
 - b. Proper procedures
 - c. Proper legal standards
 - d. Exercise of judgment
 - e. Substantial evidence test
- 3) While state law allows circuit courts to take evidence if necessary to properly decide a matter, this seldom happens
- 4)
 - a. If they did not, local zoning boards might be tempted to go along with public opinion on difficult or controversial decisions rather than applying the legal standards governing zoning boards, thereby leaving the unpopular decisions to the circuit court
 - b. Circuit courts do not have the time to hear numerous local zoning appeals that are the responsibility of local zoning boards
 - c. Local zoning boards learn correct procedure and decision making standards if they revisit decisions with which the court disagreed and must decide them in accordance with the instructions that accompany a remand from circuit court

Chapter 18

Understanding Who the Zoning Board Works With

Zoning boards are most effective when they understand not only their own roles, but also the roles of the groups they work with on a regular basis. By understanding the roles and responsibilities of these groups, the zoning board becomes more effective in its work. Figure 30 illustrates the relationship between local government bodies that are involved in zoning, as defined in Wisconsin Statutes.

Figure 30: Organizational Structure of Bodies Involved in Zoning



Beyond the public sector, zoning boards also have important interactions with local residents, landowners, developers, realtors, builders, attorneys, news reporters, and UW-Extension educators.

Planning and Zoning Staff

Planning and zoning staff are responsible for the day-to-day administration and enforcement of the zoning ordinance. They are responsible for granting permits for permitted uses and providing information to the public about applying for administrative appeals, variances and conditional uses. Zoning staff play a key role in helping the public understand the rationale behind the ordinances. Planning and zoning staff also work with the zoning board in multiple ways. They are often responsible for preparing staff reports for applications decided by the zoning board, scheduling hearings, providing public notice of hearings, and recording and taking minutes at the hearings.

To enhance the relationship between the zoning board and staff, we recommend that zoning board members consider the following tips:

- The role of staff is to provide support and assistance to help the board be more productive.
- Staff are not mind readers, so let them know what you need and by when.¹⁹⁸
- When considering an appeal of an administrative decision, the zoning administrator or other staff member is an opposing party to the applicant. Therefore, consider staff presentations and evidence side-by-side with that of the applicant.

Planning and Zoning Committee/Commission

The key role of the planning and zoning committee or plan commission is to prepare and recommend plans,¹⁹⁹ zoning ordinances, and other programs for implementing the plan to the governing body. The governing body is legally responsible for making final decisions. We recommend that the zoning board

¹⁹⁸ Easley, V. Gail and David A Theriaque. The Board of Adjustment. 2005. Planners Press, pp. 18-19.

¹⁹⁹ Including developing: clear community vision and goals; sufficient public education and buy-in; and zoning that complements, and is complemented by, other community tools.

meet with the plan commission/committee²⁰⁰ annually to discuss potential revisions to the zoning ordinance in order to improve provisions that are unclear, inadequate, overly restrictive, or otherwise problematic.

If assigned by the local zoning ordinance, the plan commission/committee also decides whether to grant conditional use permits. Additionally, they may be charged with overseeing the hiring, training, workload, and personnel matters of planning and zoning staff.

Governing Body (County Board, Town Board, Village Board, City Council)

The governing body adopts and amends plans and zoning ordinances and appoints members to the zoning board. Specifically, the chair, administrator, or executive of the governing body appoints the zoning board subject to the approval of the governing body. Other responsibilities assigned to the governing body include approving the government budget (including a budget for the zoning board), and deciding conditional use permits if assigned by the local zoning ordinance.

To achieve community planning goals and adhere to legal standards, the zoning board must sometimes make unpopular decisions. The elected officials on the governing body will eventually hear about these decisions, making it important that they understand land use issues and the rationale of the zoning board. Land use planning initiatives, education about zoning and other plan implementation tools, and discussions about current land use topics can help the governing body gain a sense of confidence in the decisions that the board makes.

Figure 31: Cedarburg Town Board.
Photo courtesy of Town of Cedarburg



²⁰⁰ We use plan commission/committee in a generic fashion to refer to all of the following planning bodies: plan commissions for cities, villages and towns with village powers; planning committees for towns without village powers; and planning agencies (commonly referred to as planning and/or zoning committees) for counties.

Local Residents

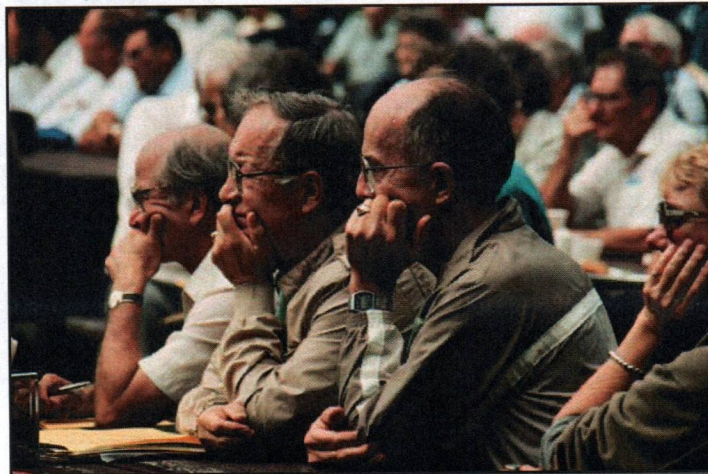
Local residents are valuable resources on the issues affecting their communities. Most residents are heard during public hearings when they appear to support—or more often object to—a proposed variance, conditional use or administrative appeal.²⁰¹ To optimize public input:

- Provide additional notification beyond the required legal notice about hearings by posting signs and sending letters or postcards to neighbors and other interested parties.
- Provide clear, straightforward application materials that are available to applicants and all local residents.
- Have zoning staff willing and able to explain the zoning procedures, standards, and rationale.
- Require applications to be completed and available to local residents through the zoning office well in advance of a public hearing. This provides time for the public to read, digest and perhaps further explore the information in the application prior to the hearing, often leading to more well-informed and thoughtful discussion.
- Describe the role of the zoning board at the beginning of each hearing or meeting.
- Make zoning board decisions consistent with the standards.

Through participation in public meetings residents offer a range of perspectives and knowledge that can be used to develop stronger decisions.

Figure 32: Residents attend a public hearing.

Photo by Robert Korth, UW-Extension Lakes Program



²⁰¹ Easley, V. Gail and David A Theriaque. *The Board of Adjustment*. 2005. Planners Press. p. 19.

Developers, Realtors, Builders, and Other Contractors

Developers, realtors, builders and other contractors represent the private sector side of planning and development. These are the companies and individuals that design, build and sell subdivisions and other developments based on the codes and regulations that a community has in place. While developers and builders may complain about regulations, they appreciate a place where the process for obtaining permits is streamlined and transparent (there are no hidden costs or requirements), even though that place may be highly regulated.²⁰² Realtors, builders and other contractors often represent the landowner in applying for zoning permits.

Attorneys

Zoning rests on legal principles, statutes and codes. While many zoning boards rely on a municipal attorney for legal representation, some zoning boards hire their own attorney who specializes in land use issues. This ensures that the zoning board is working with someone who is up to speed on zoning board issues, will spend adequate time on their current applications, and may provide personalized education for the board. While there is upfront cost for this, a talented land use attorney assisting the zoning board may save the municipality money by avoiding litigation costs.

Applicants who bring lawyers to zoning board meetings may have a different interpretation of statutes or local codes than the zoning board, but this does not mean that the zoning board is wrong. In fact, the Wisconsin Supreme Court has stated repeatedly that the courts may not disturb the decision of a zoning board if any reasonable view of the evidence sustains the decision.²⁰³ Thus, by making decisions based on the law and keeping a complete record of hearings, zoning boards minimize the likelihood their decisions will be overturned.

News Reporters

The media may attend controversial zoning board hearings. Recognizing that reporters are required to cover a very broad range

²⁰² Senville, Wayne M. *Welcome to the Commission! A Guide for New Members*. 2000. Champlain Planning Press, Inc., Burlington, VT.

²⁰³ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401; *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

Section VI – Improving Zoning Decisions

of issues and work under short timelines, it's best to help them understand the role of the zoning board before a controversial issue arises. Share some, or all, of this handbook with them or invite them to a zoning board training session. Additionally, zoning staff can help reporters understand the issues at hand by providing them with copies of staff reports and applicable ordinances, plans, statutes and case law, and by taking the time to explain these materials and answer questions. When working with the media, be sure to provide clear graphics and translate your technical language into lay terminology. Reporters will get information from somewhere, so it might as well be from you or your staff. Working as a team with reporters is the best approach for obtaining accurate press coverage.

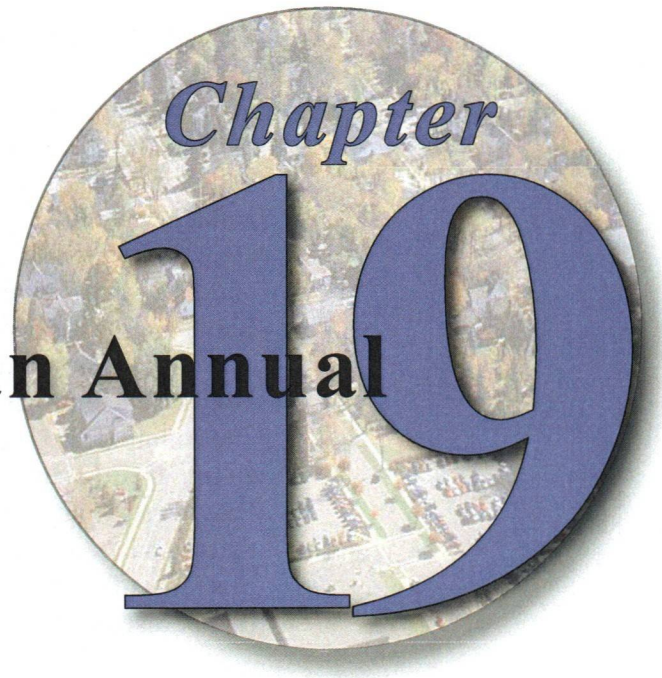
UW-Extension Educators

UW-Extension educators seek to improve the quality of local decisions by providing public, private and non-profit clients with information, targeted research results, and process support. The UW-Extension Center for Land Use Education offers educational workshops for zoning boards covering the roles and responsibilities of the zoning board and updates on recently adopted laws and court decisions. Upcoming zoning board workshops are listed at <http://www.uwsp.edu/cnr/landcenter/workshopszb.html>

Figure 33: St. Croix County planning director, David Fodroczi reviews a land use map with UW-Extension community development educator, Jim Janke.
Photo by Jim Gill, UW-Extension photo gallery



Conducting an Annual Self-Audit



Review Zoning Board Decisions

Zoning board members may be tempted to bend the rules to fit their view of proper zoning policy if they forget their quasi-judicial role in deciding variances, administrative appeals and conditional uses. One way to avoid this temptation is to provide an opportunity for the zoning board to become directly involved in local land use policy development. Because of its unique role, the board has special insight into circumstances in which flexible development standards may be required, where policies concerning nonconforming lots and structures may need reconsideration, or where enforcement or board related procedures require revision.

An annual summary of the number and type of board decisions and related development conditions imposed can guide the board in making recommendations for policy changes. An example of such a report is provided in *Appendix D*. Look for patterns in the report that suggest opportunities for improving ordinance language clarity, effectiveness of standards, and administrative efficiency.

Communicate with Plan Committee/Commission

We recommend that the zoning board meet annually with zoning staff, the plan commission/committee, or the governing body to discuss concerns or make recommendations related to zoning. In addition, zoning boards may invite plan commission/committee members to attend zoning board meetings to gain an understanding and appreciation for the work of the zoning board. Similarly zoning board members may also consider attending plan commission/committee meetings and meetings of the governing body when zoning issues are on the agenda. You might choose one zoning board member to do this, or rotate the role through the zoning board members so everyone benefits from this experience. Provide a zoning board notice in accordance with the open meetings law if you will have multiple zoning board members at meetings of other bodies. Also ensure that zoning board members do not discuss any current cases.

Review Informational Materials and Forms

Zoning boards rely heavily on written reports, forms and other materials to make well-informed decisions. Application materials and forms should prompt applicants to submit sufficient information to meet their burden of proof and may ultimately reduce the number of requests that come before a zoning board. Staff reports and decision forms should prompt zoning boards to follow appropriate legal standards and properly record their rationale for making decisions. We recommend that the zoning board work jointly with zoning staff to review and update these important materials on a regular basis:

- **Application materials** should clearly describe the zoning board hearing process, submittal requirements, and decision criteria. Together with guidance from zoning staff, these materials should also help applicants to identify alternative site locations or project designs that comply with ordinance standards.
- **Application forms** should prompt applicants to meet their legal burden of proof. Many jurisdictions supply an example site plan and a sample petition as part of a packet of application materials. The site plan is used to illustrate dimensional standards and other ordinance requirements. Many jurisdictions also require project site photos, which are

useful to the board in evaluating a proposal and later to the zoning department in monitoring project compliance.

- **Staff reports** should provide zoning boards with critical information regarding relevant plans, ordinances, restrictions, and site conditions on the property and neighboring properties. Zoning staff, together with zoning boards, should decide whether it is appropriate to prepare staff reports and what to include in them.
- **Decision forms** should prompt findings of fact and conclusions of law by the zoning board. They should also reflect appropriate legal standards (e.g. variance criteria) and specify appeal rights, a permit expiration date, and circumstances that might prompt the board to revisit its decision in the matter.

Examples of materials and forms are provided in *Appendices D and E*.

Review, Enforcement, and Appeals Procedures

There are many procedural issues related to zoning administration and enforcement that are not specified in state statutes or case law. These may cause undue administrative burdens, frustrate landowners and other interested parties, and potentially provide opportunity for appeal of zoning decisions. We recommend that governing bodies, in consultation with zoning boards or staff, review and adopt necessary rules or ordinances that:

- Provide for adequate notice of decisions of administrative officials to affected parties,
- Limit the time period for appeal of administrative decisions to the zoning board,
- Specify how the filing date of a board decision is determined (which establishes the commencement of the 30-day appeal period),
- Specify circumstances allowing reconsideration of a decided matter, and
- Specify how after-the-fact applications will be treated.

Review Rules for Conduct of Meetings and Hearings

To avoid similar issues related to zoning board meetings and hearings, we recommend that local communities adopt necessary rules, ordinances, or materials that:

- Provide proper notice for meetings, hearings and closed sessions,
- Describe how site inspections will comply with open meetings law requirements,
- Identify and address bias and conflicts of interest,
- Provide for appointment and education of alternate board members,
- Determine admissibility of written testimony, and
- Provide instructions for those providing testimony in order to promote hearings that are orderly, fair and efficient.

Review Need for Counsel

Generally, the municipal attorney provides legal representation for the governing body of the local unit of government. However, as land use issues become increasingly complex, case loads increase, and applicants regularly hire their own attorneys, more zoning boards are opting to retain independent legal counsel with expertise in land use or zoning issues. These zoning boards find that it is worthwhile to spend money upfront in exchange for avoiding potential litigation—and the time, money and headaches associated with it! Many communities who opt for this approach retain an attorney from outside of the area to avoid someone who represents local property owners.

Since a zoning officer or the planning commission/committee may contest any zoning board decision, and a municipal attorney may not represent more than one body within a local government in the same case,²⁰⁴ the zoning board should anticipate needing their own attorney and have this provided for in local rules, policies and budgets. We recommend that zoning boards meet with the appropriate standing committee or governing body to discuss issues such as when the zoning board may retain independent legal counsel and how counsel will be selected and compensated.

²⁰⁴ *Nova Services v. Village of Saukville*, 211 Wis.2d 691, 565 N.W.2d 283 (Ct. App. 1997)

Take Advantage of Opportunities for Continuing Education

Zoning boards should regularly assess their needs for ongoing education. Local zoning staff may be able to provide zoning boards with updates to local ordinances, statutes, and case law. Training may also be provided by other groups such as the University of Wisconsin-Cooperative Extension. For example, the Center for Land Use Education regularly provides training for zoning boards, including updates to state statutes and case law. The Local Government Center provides training on topics such as Wisconsin's open meeting law, public records law, and code of ethics. County-based Extension educators may also be available to assist with these or other topics.

Scheduling periodic educational or working sessions also provides a good opportunity for zoning boards to work through and discuss the impacts of development scenarios outside of the pressures of a formal decision-making process. (However, zoning boards must be careful not to discuss current or pending development decisions outside of an open meeting). These types of opportunities may also allow zoning board members to become more comfortable with fellow board members and staff.

Chapter 20

Translating Zoning Board Decisions into Better Zoning Ordinances

Ordinances are not carved on stone tablets—and that’s not just because Wisconsin is the nation’s leading paper producer! Since it’s impossible to foresee all future changes and how the ordinance will apply to these situations, zoning ordinances should be working documents that are modified as needs arise. We recommend updating the zoning ordinance every few years to:

- Incorporate changes in standards or administration that improve ordinance clarity or efficiency based on the practical knowledge you’ve gained from working with the ordinance,
- Plan for or respond to new uses or development patterns, and
- Maintain consistency with any changes to your community comprehensive plan.

Through experience interpreting an ordinance and applying it to specific fact situations, zoning boards often develop useful ideas about improving the ordinance. We recommend they share these ideas with the plan commission as described below.

How can the zoning board and plan committee/ commission work together to improve the local zoning ordinance?

Ultimately, the decision to amend a zoning ordinance is made by the local governing body, based on a recommendation from the plan commission. Following their annual self-audit, we recommend that the zoning board meet with the plan commission/ committee to discuss their experience applying the ordinance to specific situations and other findings. Specifically, the zoning board may suggest the plan commission/committee revise the zoning ordinance in the following ways:

- **Clarify terminology.** Definitions may need to be added or clarified. Clarify ordinance definitions and text based on recent administrative appeals.
- **Recommend effective design or performance standards.** See the discussion of the advantages and disadvantages of each in *Chapter 14*.
- **Recommend appropriate levels of permit review.** If the zoning board has developed a set of conditions that it applies routinely to specific conditional uses that result in effective control, the zoning board may recommend including these conditions in the ordinance as requirements of the conditional use. Conversely, if a certain type of permitted use is proving problematic, the board may recommend adding requirements to the ordinance or converting the permitted use to a conditional use, so that additional conditions may be applied to mitigate adverse impacts.
- **Ensure enforceability.** Provide clear directions about how measurements such as setbacks, heights, and floor areas are to be made and ensure adequate staffing and staff training. Encourage the planning commission/committee to adopt an enforcement policy if none exists.

If you want to change the law – get elected!

If zoning board members want to go beyond the points outlined above and change the zoning ordinance, we recommend they participate in an advisory group for ordinance revision or run for a position on the local governing body.

Section VI – Review

Keywords

- Self-audit

Test Your Knowledge (answers on page 136)

Chapter 18 - Understanding Who the Zoning Board Works With

- 1) Name five of the eight groups that zoning boards regularly work with.
- 2) Which local government body has the power to change the zoning ordinance?
- 3) Describe three ways that zoning staff can help the zoning board.
- 4) Describe two ways to optimize public participation at a zoning board hearing.

Chapter 19 – Conducting an Annual Self-Audit

- 5) What should be included in an annual self-audit?
- 6) Who is available to provide continuing education for zoning boards?

Chapter 20 – Translating Zoning Board Decisions into Better Zoning Ordinances

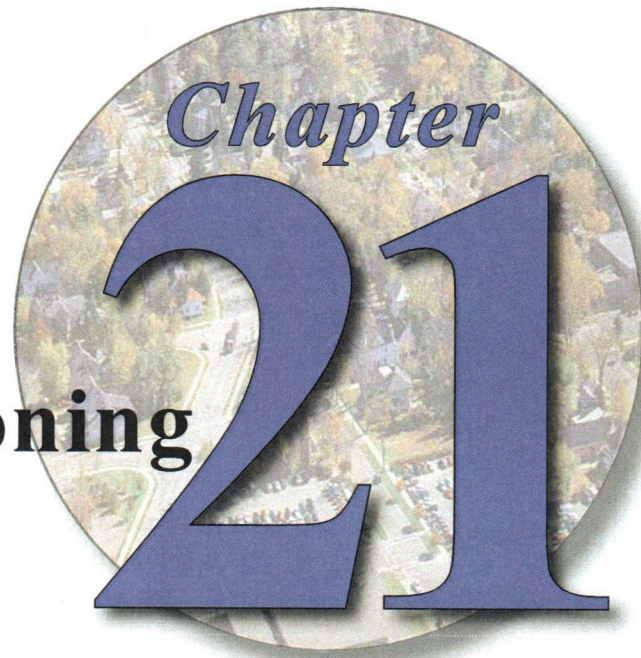
- 7) How often should zoning ordinances be updated?
- 8) Who has the authority to change or amend the zoning ordinance?
- 9) If a zoning board member wants to change the ordinance, what should they do?

Answers

- 1)
 - a. Planning and zoning staff
 - b. Plan commission/committee
 - c. Governing body
 - d. Residents
 - e. Development community
 - f. Attorneys
 - g. News reporters, and
 - h. UW-Extension
- 2) The governing body (county board, town board, village board, city council)
- 3)
 - a. By providing information about applying for administrative appeals, variances, and conditional uses
 - b. By helping the public understand the rationale behind the ordinances
 - c. By preparing staff reports for the applications decided by the zoning board
 - d. By scheduling hearings
 - e. By providing public notice of hearings
 - f. By recording and taking minutes at the hearings
- 4)
 - a. By providing public notice of hearings as required by state law
 - b. By providing clear, straight forward application materials that are available to applicants and all local residents
 - c. By encouraging zoning staff to explain zoning procedures, standards, and rationale
 - d. By requiring applications to be completed and available to local residents through the zoning office in advance of the public hearing
 - e. By describing the role of the zoning board at the beginning of each hearing or meeting
 - f. By make zoning board decisions consistent with the standards

- 5) Decisions, procedures, forms, rules of conduct, need for counsel, and opportunities for continuing education. Any issues or needs that arise should be clearly communicated with zoning staff, the plan commission/committee, and/or the governing body, as appropriate
- 6)
 - a. First, check with your local planning and zoning staff. They can often provide updates regarding local development issues, ordinances, and even relevant case law or statutory updates
 - b. Next, contact your local Extension office. They may be able to offer training or put you in contact with the Center for Land Use Education or Local Government Center, depending on your needs
- 7) Every few years
- 8) The governing body, with recommendations from the plan committee/commission
- 9) Meet with the plan committee/commission to discuss potential changes, participate in an advisory group for ordinance revision, or run for office on the governing body

Shoreland Zoning

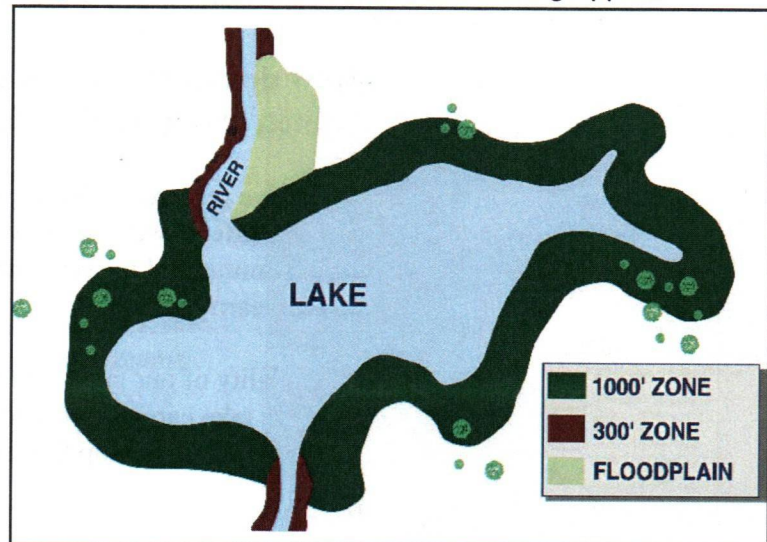


Where does shoreland zoning apply?

Wisconsin statutes define shorelands as lands within 1,000 feet of the ordinary high-water mark (OHWM) of a navigable lake, pond, or flowage and lands within 300 feet or within the floodplain of a navigable river or stream, whichever distance is greater.

A state administrative rule (NR 115) sets minimum standards for local ordinances. The state requires counties to adopt and administer development standards for shorelands in unincorporated areas,²⁰⁵ which are areas outside of cities and villages. Many counties have adopted standards that are more restrictive than state minimum standards. Towns may not opt out of county shoreland zoning, as they may general county zoning.²⁰⁶ While cities and villages are not required to adopt

Figure 34: Areas Where Shoreland Zoning Applies



²⁰⁵ Wis. Stat. § 59.692; Wis. Admin. Code § NR115.

²⁰⁶ Wis. Stat. § 59.692(2)(a)

shoreland zoning, shorelands within their municipal boundaries may be subject to shoreland zoning in three cases:²⁰⁷

1. When official state maps describe wetlands within shoreland areas,
2. When a city or village has annexed unincorporated shorelands,²⁰⁸ and
3. When cities or villages have voluntarily enacted their own shoreland zoning requirements.

What are the purposes of shoreland zoning?

The specific purposes of a shoreland zoning ordinance should be considered when deciding whether to grant variances, conditional uses and administrative appeals for properties in the shoreland zone, just as with any other ordinance.

The purposes of shoreland zoning, as defined by the state, are to:

- Maintain safe and healthful conditions,
- Prevent and control water pollution,
- Protect spawning grounds, fish, and aquatic life,
- Control building sites, placement of structures, and uses, and
- Reserve shore cover and natural beauty.²⁰⁹

In addition, shoreland zoning protects the rights of all Wisconsin residents to access the water, fish, swim, boat, and enjoy the scenic beauty, which is also known as the public interest.

How do our shoreland decisions affect property values, water quality, fisheries and wildlife?

Extensive research exists describing how land use along lakes and streams affects water quality, fisheries and wildlife. Here is a very brief summary of the research and a few references if you would like to learn more.

The quality of our lakes and streams is ultimately a reflection of how we take care of our land. Specifically, how our communities develop and redevelop the land around lakes and streams plays a

²⁰⁷ Kent, Paul G. and Tamara A. Dudiak. *Wisconsin Water Law: A Guide to Water Rights and Regulations*, 2nd Ed., 2001, p. 38.

²⁰⁸ Wis. Stat. § 59.692(7)(a)

²⁰⁹ Wis. Stat. § 281.31

large role in whether those lakes and streams remain healthy for generations to come or are degraded and become a detriment to the community.

Property values

A recent study of over 1,000 waterfront properties found that when all other factors were equal, properties on lakes with clearer water commanded significantly higher property prices. In other words, people prefer clean water and will pay more to live on lakes with better water quality.²¹⁰

Water quality, fisheries and wildlife

Maintaining good water quality, fisheries and wildlife in lakes and streams depends on three steps:

1. Curb pollutants

Curb pollutants at their source – fertilizers, eroding soils, malfunctioning septic systems, household toxins and agricultural runoff.

Phosphorus is an essential nutrient for plants. However, when too much phosphorus makes its way into our lakes and streams, it promotes the rapid growth of weeds and algae and decreases water clarity, often turning lakes green. Decaying algae also deplete oxygen in the water, so that fish can no longer thrive. Human activities contribute a great deal to the amount of phosphorus that enters a lake or stream.

Consider this – one pound of phosphorus in runoff can result in up to 500 pounds of algae growth! Phosphorus comes from soils and fertilizers, which are easily washed into lakes.

Since phosphorus is often bound to soil particles, one key to keeping phosphorus out of lakes and streams is to minimize the amount of land that is cleared or otherwise disturbed, so that soil erosion is minimized.

Figure 35: Land Use Affects Water Quality

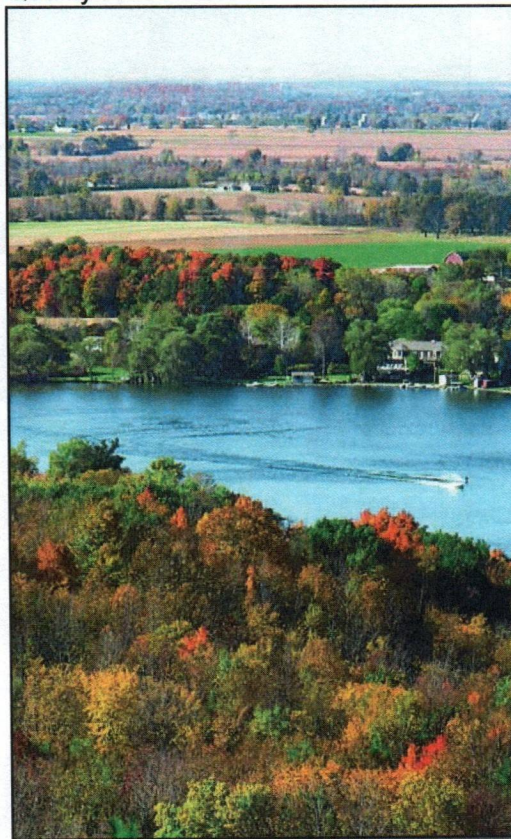
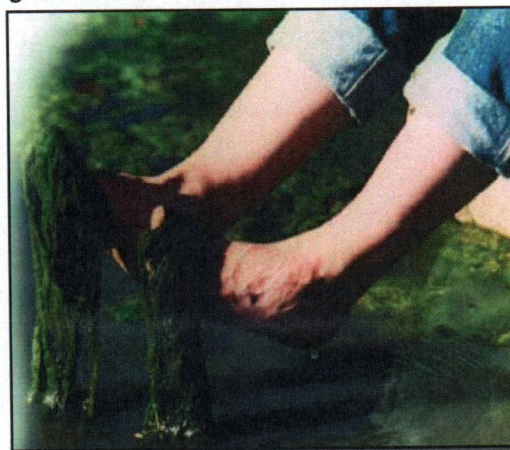
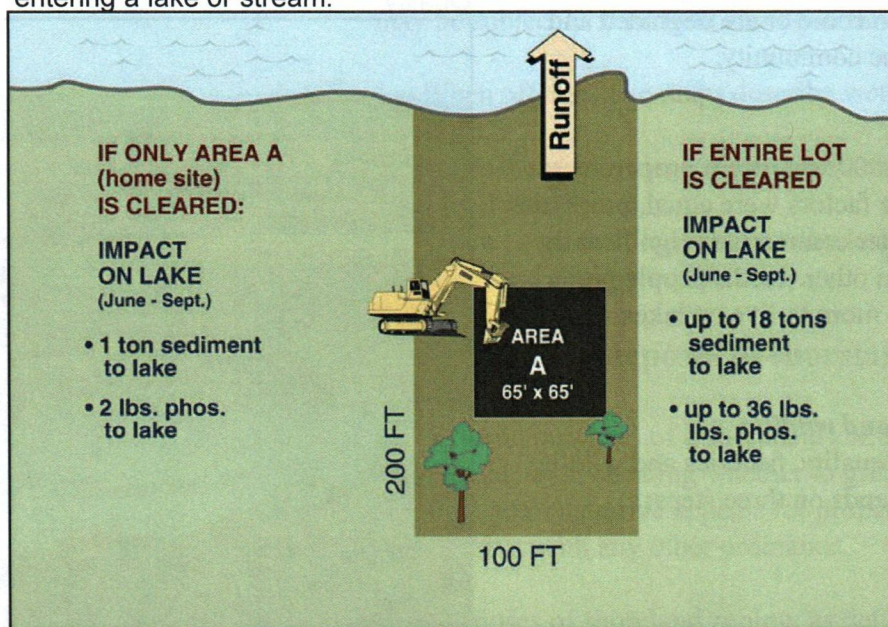


Figure 36: Effects of Excessive Phosphorus One pound of phosphorus can result in up to 500 pounds of algae growth.



²¹⁰ Krysel, Charles et al. *Lakeshore property values and water quality: Evidence from property sales in the Mississippi headwaters region*. June 2003. Mississippi Headwaters Board. Available: www.mhbriverwatch.dst.mn.us/publications/lakeshore_property.pdf

Figure 37: Less land clearing limits the amount of phosphorus entering a lake or stream.



Another approach is to attempt to capture the eroded soil before it enters the waterbody. As Figure 37 illustrates, completely clearing a half-acre lot can add up to 36 pounds of phosphorus to a lake or stream.

In addition to phosphorus, many other chemicals – from antifreeze to zylene – can pollute lakes and streams.

To curb pollutants, zoning board members may apply the following conditions. Land conservation employees or private licensed engineers may help create erosion control plans.

- Limit the area of grading and other disturbance and make the remainder of the parcel off-limits to heavy equipment.
- Maintain established trees and native plants with deep root systems to hold soil in place.
- Require a complete erosion control plan and inspection of erosion control measures prior to and during construction. Require bonding to repair damage if erosion control measures fail.
- Require a list of the chemicals and of the maximum quantities of them that will be used or stored in the shoreland zone. For instance, a nursery may use or store quantities of fertilizers and pesticides that could have a large impact on a nearby lake or stream. Gasoline and other toxic chemicals should also be considered. Use this information to decide whether the proposed use is reasonably suited for the location.
- To ensure that conditions are met, require self-reporting or independent inspections and use bonding or specific predetermined fines.

Keeping phosphorus or any other chemical 100% contained over a long timeframe is not feasible. Thus, the zoning board may decide that the potential for water pollution is too great on a site and deny the permit.

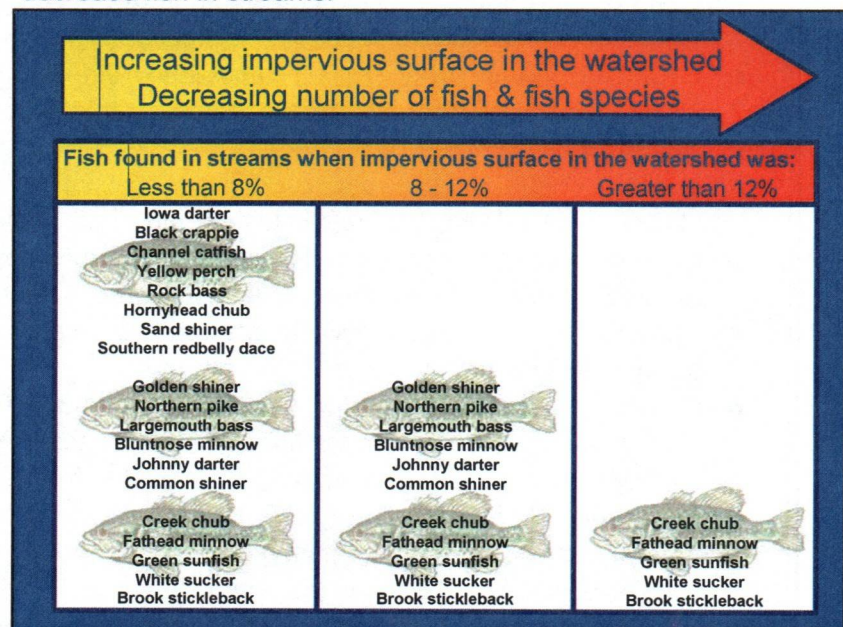
2. Cut runoff

Runoff is excess water that comes from hard surfaces like rooftops, driveways, parking areas, sidewalks, decks, and compacted soils. Gravel areas quickly become compacted and create nearly as much runoff as paved surfaces. Runoff water washes soil, fertilizer, car fluids and other pollutants into our lakes and streams. To reduce runoff, let water soak into the ground.

Lawns absorb little rainfall. In fact, a recent Wisconsin study found that lawns created much more runoff than wooded areas. As a consequence, the runoff from unfertilized lawns carried eight times more phosphorus to the lake than the runoff from similar sized wooded areas.²¹¹

Runoff also affects fisheries. Researchers studied 47 Wisconsin streams and found that fish and insect populations decline dramatically when more than 8-10% of the watershed is covered with hard surfaces such as rooftops, roads and driveway. Streams with more than 12% hard surfaces have consistently poor fish communities.²¹² Not surprisingly, impervious surfaces closer to the water have a greater impact because there is less opportunity for the runoff from these areas to soak into the ground or be filtered before reaching the lake or stream.²¹³ Hard surfaces harm fisheries because:

Figure 38: Impervious surfaces greater than 8% of the watershed decrease fish in streams.



²¹¹ Graczyk, David J. et al. *Hydrology, nutrient concentrations, and nutrient yields in nearshore areas of four lakes in northern Wisconsin*, 1999-2001, 2003. USGS Water Resources Investigation Report 03-4144, p.41. Available: <http://pubs.usgs.gov/wri/wrir-03-4144>

²¹² Wang, L., J. Lyons, P. Kanehl, R. Bannerman, and E. Emmons 2000. "Watershed Urbanization and Changes in Fish Communities in Southeastern Wisconsin Streams." *Journal of the American Water Resources Association*. 36:5(1173-1187); Wang, L., J. Lyons, and P. Kanehl 2001. "Impacts of Urbanization on Stream Habitat and Fish across Multiple Spatial Scales." *Environmental Management*. 28(2):255-266.

²¹³ Wang, L., J. Lyons, and P. Kanehl 2001. "Impacts of Urbanization on Stream Habitat and Fish across Multiple Spatial Scales." *Environmental Management*. 28(2):255-266.

- Warm runoff from roads and other hard surfaces raises water temperatures and decreases oxygen levels, eliminating some fish species,
- Sediment carried in the runoff creates cloudy water, so fish that hunt by sight have a hard time finding dinner,
- Sediment covers spawning areas and clogs the gills of some fish, and
- Streams become 'flashy', meaning runoff occurs more quickly after a storm, peak flows become larger, and critical dry season flows decrease because less groundwater recharge is available.

To cut runoff, zoning board members may apply the following conditions. Land conservation employees or private engineers can help design or approve effective designs.

- Limit the area of impervious surfaces. This can be done by narrowing roads and driveways and building up rather than out or by replacing conventional hard surfaces with alternatives such as green roofs and pervious pavers.
- Locate impervious surfaces as far as possible from lakes and streams and in locations where their runoff will soak into the ground or at least be substantially filtered prior to entering the water body.
- Maintain established trees and native plants whose deep root systems hold soil in place and extend each year to create new pores in the soil that allow water to soak in.
- Limit the area of compacted soils that prevent water from soaking in. To do this, limit the area compacted by heavy equipment and other vehicles.
- Minimize grading that removes the natural divots where water naturally collects and has time to soak in.
- Consider requiring landowners to decompact soil after construction in areas where compaction is not necessary to support buildings, roads or driveways. A review of methods that are and are not effective is available from the Center for Land Use Education.
- To ensure that conditions are met, require self-reporting or independent inspections and use bonding or specific predetermined fines.
 - To impress upon a contractor that he was serious about not removing unmarked trees, a landowner having a motel built on his shoreland property included a fine of \$10,000 per unmarked tree that was damaged.

A proposal may create more runoff than can soak in on the lot. To avoid adversely affecting neighboring landowners, lakes or streams, the zoning board may decide to deny the permit.

3. Capture and cleanse

If pollutants are present and hard surfaces increase the amount of runoff carrying pollutants toward the lake, the last line of defense is to capture and cleanse the runoff before it reaches the waterway by using shoreland buffers, rain gardens, rain barrels or engineered approaches.

Natural shorelands contain a lush mixture of native grasses, flowers, shrubs and trees that help to filter polluted runoff and provide important habitat for animals in the water and on the land. Trees and branches that have fallen in the water provide another important component of wildlife habitat—natural fish cribs, basking areas for reptiles, and feeding sites. If a property has lawn to the water's edge, the best place to start planting to improve water quality is in the area where the most water runs off your property. Larger areas of natural shoreline provide more benefits.

A mature native buffer represents many years of nature at work and discourages undesirable, exotic plants and animals while attracting songbirds, butterflies, turtles and frogs.

Figure 39: Intact Shoreland Buffers Cleanse Runoff



To capture and cleanse runoff, zoning board members may apply the following conditions. Land conservation employees, professional licensed engineers and natural landscaping professionals may help create storm water management plans.

- Require a storm water management plan with a defined performance standard (e.g., no net increase in storm water runoff from a 50 year storm). Storm water practices may include green rooftops, pervious pavers, infiltration basins/raingardens, buffer strips, etc.
- Maintain established plants, including trees and native plants with stiff stems to slow down and filter runoff. The plants also provide essential food and habitat for wildlife.
- Require downspouts to be directed to lawn or landscaping, not onto hard surfaces.
- Require rain gardens that collect water during wet times and serve as beautiful gardens all the time. They are landscaped areas planted to wildflowers and other native vegetation to replace areas of lawn. The gardens fill with a few inches of water and allow the water to slowly filter into the ground. To determine the necessary size to capture runoff from hard surfaces, see the publication *Rain Gardens: A How-To Manual for Homeowners* (<http://clean-water.uwex.edu/pubs/pdf/home.rgmanual.pdf>).
- Require shoreline buffer restoration or expansion to filter runoff. See the publication *Protecting and Restoring Shorelands* at <http://clean-water.uwex.edu/pubs/pdf/shore.protect.pdf> to find out how large of a buffer is needed to achieve various benefits.
- To ensure that conditions are met, require self-reporting or independent inspections and use bonding or specific predetermined fines.

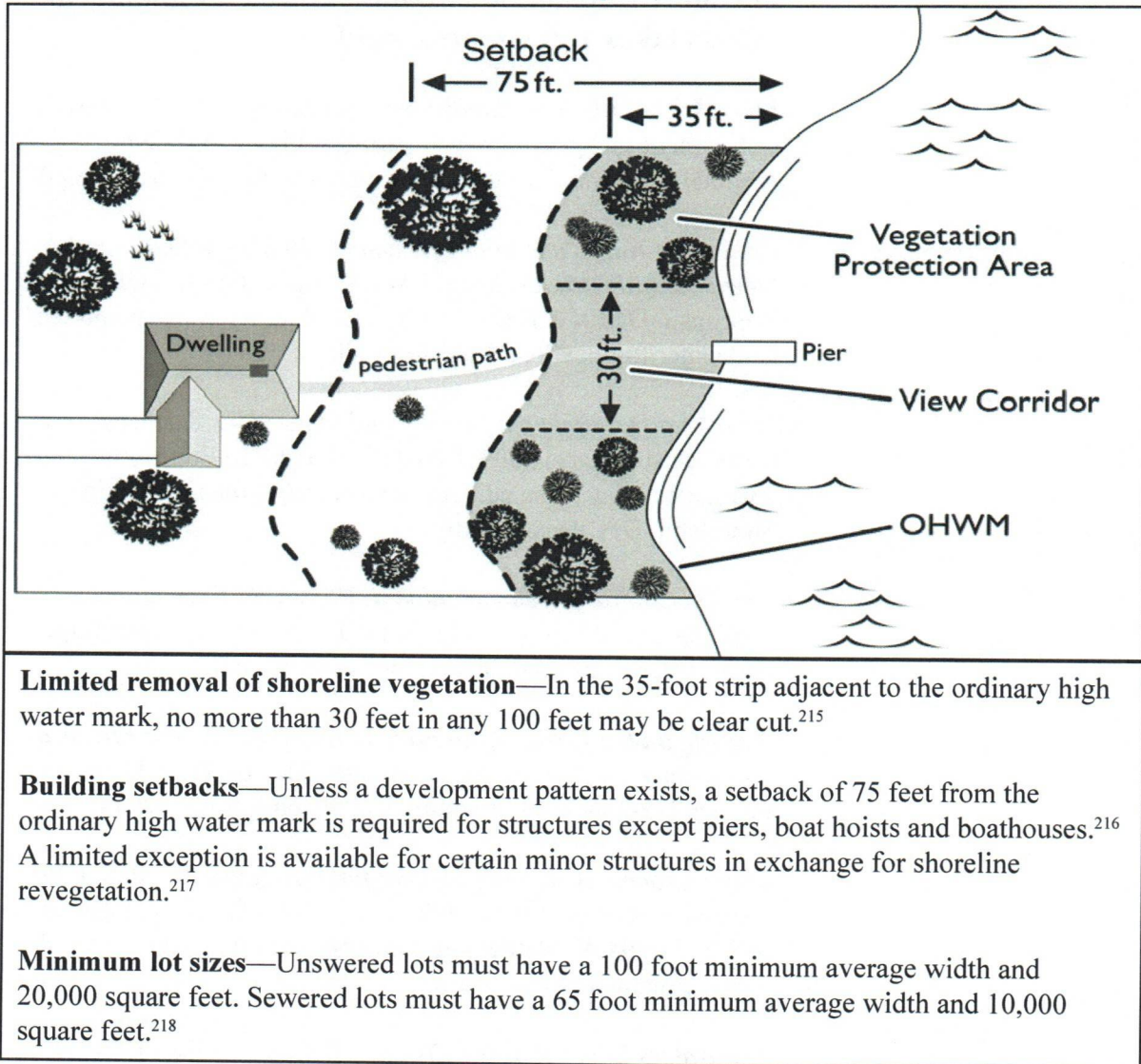
A proposal may create more runoff than can be captured and cleansed on the lot. To avoid adversely affecting neighboring landowners, lakes or streams the zoning board may decide to deny the permit.

Minimum statewide shoreland zoning standards

To achieve the purposes of shoreland zoning, the state sets minimum building setbacks, restrictions on shoreline vegetation removal, and minimum lot sizes to limit the density of development. Many counties have adopted standards that are more restrictive than state minimum standards. The state minimum standards are described generally in *Figure 40*.²¹⁴

Area variances in shoreland areas compromise water quality, fish and wildlife habitat, and natural scenic beauty. The effects

²¹⁴ Figure created by Jeffrey Strobel, Environmental Resources Center, for *Wisconsin Water Law: A Guide to Water Rights and Regulations*. 2nd Ed., 2001.

Figure 40: Minimum Statewide Shoreland Zoning Standards

of variances, though they may be imperceptible on an individual site, accumulate lot by lot throughout the shoreland. For instance, runoff from structures located too close to the shore quickly carries nutrients and sediment to a lake or stream with very little opportunity for a shoreland buffer to filter contaminants or infiltrate runoff. Consequently, many communities limit variances to minimize impacts on public waters.²¹⁹

²¹⁵ Wis. Admin. Code § NR 115.05 (3)(c)

²¹⁶ Wis. Admin. Code § NR 115.05 (3)(b)

²¹⁷ Wis. Stat. § 59.692(1v)

²¹⁸ Wis. Admin. Code § NR 115.05 (3)(a)

²¹⁹ *Creating an Effective Shoreland Zoning Ordinance: A Summary of Wisconsin Shoreland Zoning Ordinances, 2000*, DNR publication #WT-542-00. See Appendix C for ordering information.

For more information on how shoreland management affects lakes and streams, read—

Phosphorus in Lawns, Landscapes and Lakes. 2004. Minnesota Department of Agriculture and partners. Phone: 651-296-6121 Available: www.mda.state.mn.us/appd/ace/phosphorusguide.pdf

Protecting Your Waterfront Investment: 10 Simple Shoreland Stewardship Practices. 2005. UWEX Publication GWQ044 and Wisconsin DNR (WT-821 2005). Available: www.uwsp.edu/cnr/landcenter/Publications/waterfront.pdf

Shoreland Development Density and Impervious Surfaces. (research summary) 2003. Center for Land Use Education. Available: www.uwsp.edu/cnr/landcenter/pdf/Imp_Surf_Shoreland_Dev_Density.pdf

Erosion Control for Homebuilders. 1996. UW-Extension (GWQ001) and Wisconsin DNR (WT-457-96) Available: <http://clean-water.uwex.edu/pubs/pdf/storm.erosio.pdf>

A Storm on the Horizon: An Educational Video on the Effects of Stormwater on Our Rivers. 18 minute video by Trout Unlimited. Phone: 715-386-7568 or andrewlamberson@hotmail.com

Rain Gardens: A How-To Manual for Homeowners. 2003. UW-Extension (GWQ037) and Wisconsin DNR (WT-776 2003) Phone: 608-267-7694 Available: <http://clean-water.uwex.edu/pubs/pdf/home.rgmanual.pdf>

The Waters Edge: Helping Fish and Wildlife on Your Waterfront Property. 2000. Wisconsin DNR (PUB-FH-428 00). Available: www.dnr.state.wi.us/org/water/fhp/fish/pubs/thewatersedge.pdf

Floodplain Zoning

Chapter

22

Where does floodplain zoning apply?

A community that has been issued official floodplain maps by the DNR must adopt and administer a floodplain zoning ordinance.²²⁰

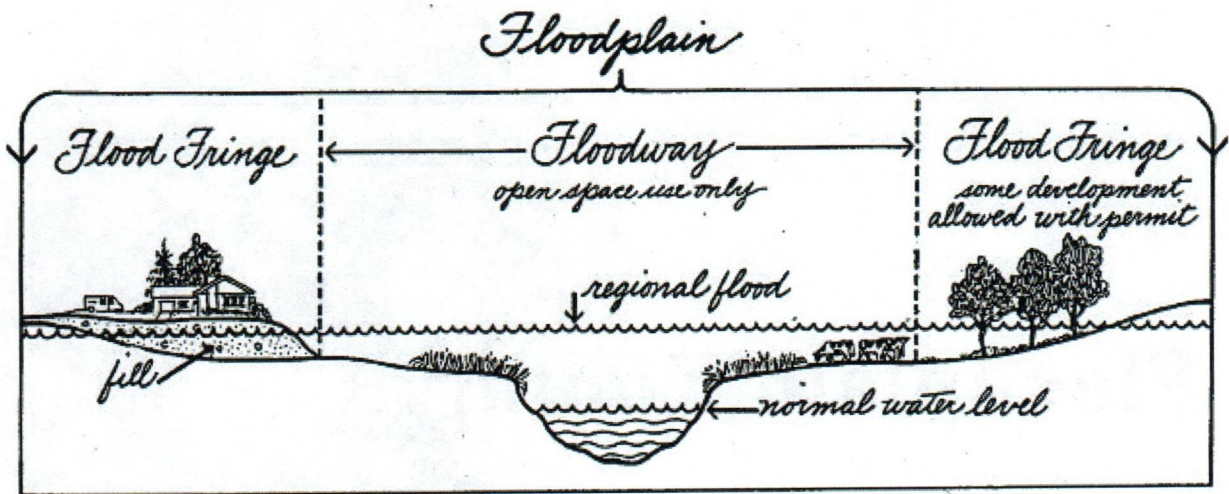
As a consequence, citizens in the community become eligible to apply for federal flood insurance. A state administrative rule (NR 116) sets minimum standards for local ordinances.

The **floodplain** consists of lands that are subject to flooding during the regional flood. The floodplain includes floodway and flood fringe zones. Regional flood elevations are calculated by hydraulic models that consider the size of a drainage basin, amount of precipitation and land characteristics. They are also based on evidence of previous flooding.

The **floodway** consists of the channel of a river or stream, and those portions of the floodplain adjoining the channel that are required to carry the regional flood discharge. The floodway is the most dangerous part of the floodplain. It is characterized by deeper moving water.

²²⁰ Wis. Stat. § 87.30(1)

Figure 41: Floodplain Illustration



The **flood fringe** is the portion of the floodplain landward of the floodway. It is generally associated with standing water rather than flowing water and with shallower depths.

What are the purposes of floodplain zoning?

The purposes of floodplain zoning are to protect human life, health and to minimize property damages and economic losses.

Section VII – Review

Keywords

- Ordinary high water mark
- Floodplain
- Floodway
- Flood fringe

Test your Knowledge (answers on page 152)

Chapter 21 – Shoreland Zoning

- 1) Name the five statewide purposes of shoreland zoning.
- 2) Does your local shoreland zoning ordinance provide any additional purpose statements?
- 3) A recent study of waterfront properties found that one factor resulted in significantly higher property prices. What is that one factor?
- 4) Name three steps that zoning boards can take to maintain good water quality, fisheries and wildlife in lakes and streams.
- 5) When the impervious surfaces in a watershed exceed a certain level the number of fish and fish species decreases significantly. What percentage is this?

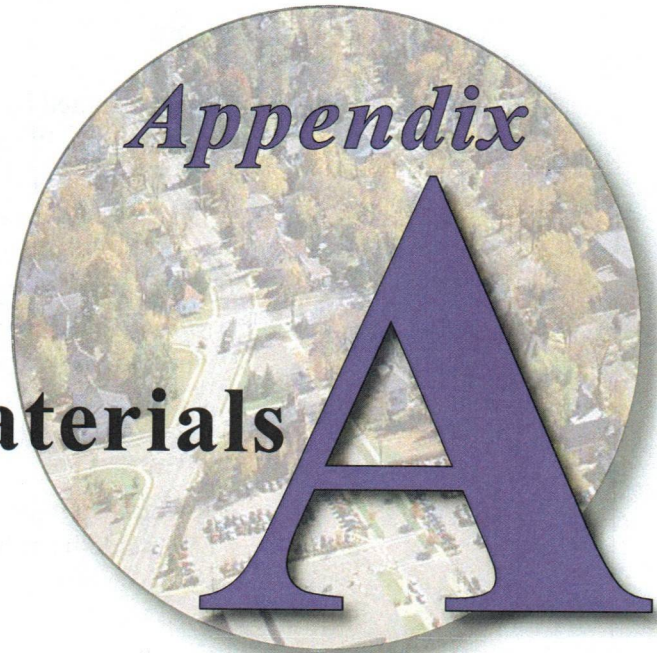
Chapter 22 – Floodplain Zoning

- 6) Name the purposes of floodplain zoning.

Answers

- 1)
 - a. Maintain safe and healthful conditions
 - b. Prevent and control water pollution
 - c. Protect spawning grounds, fish, and aquatic life
 - d. Control building sites, placement of structures, and uses; and
 - e. Reserve shore cover and natural beauty
- 2) Answers may vary
- 3) Clearer water
- 4)
 - a. Curb pollutants
 - b. Cut runoff
 - c. Capture and cleanse
- 5) 8%
- 6)
 - a. Protect human life and health
 - b. Minimize property damage and economic losses

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 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 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 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 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 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: 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: 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 on-line from the Center for Land Use Education at www.uwsp.edu/cnr/landcenter/newsletters.html

Zoning Bulletin. Monthly bulletins summarizing the most significant recent zoning lawsuits from throughout the United States. Available from 800-229-2084 or 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 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 www.plannersweb.com

Websites

UW-Extension Center for Land Use Education
www.uwsp.edu/cnr/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

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.²²¹ 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).

²²¹ 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/llaw/paliguide/>.

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: 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)

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.²²²

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

Figure 43: Citation Format for Wisconsin Court Decisions After 2000

State ex rel. Ziervogel v. Washington County BOA, 2004 WI 23, 269 Wis. 2d 549, 676 N.W. 2d 401	
↑ <i>Case name</i>	↑ ↑ ↑ <i>Public domain Location(s) in official reporters</i>
ex. rel.	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

²²² 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/llaw/paliguide/>.

Websites for Accessing Wisconsin Court Decisions

Wisconsin Supreme Court decisions released since September 1995

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

Wisconsin Court of Appeal decisions released since June 1995

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

Older Wisconsin Supreme Court and Court of Appeal decisions

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

Who Decides Whether to Grant Conditional Uses and Special Exceptions

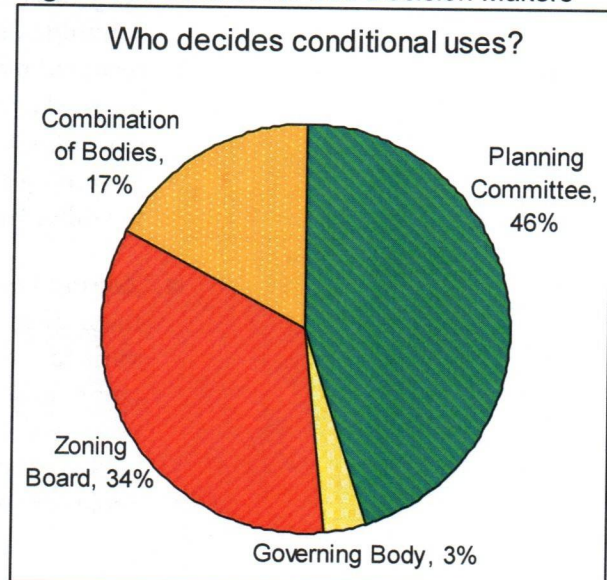
Conditional use is used in this appendix to mean both conditional uses and special exceptions.

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.²²³ *Figure 44* shows who decides conditional uses for Wisconsin counties based on a 2004 survey completed by 31 counties.

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

Figure 44: Conditional Use Decision Makers



²²³ Counties - Wis. Stat. § 59.694(7)(a); Cities, villages and towns with village powers - Wis. Stat. § 62.23(7)(e)1

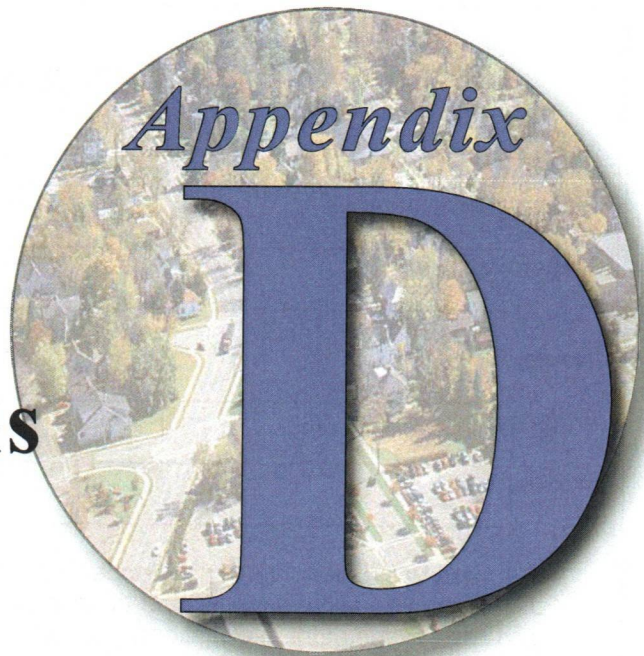
because they are usually the most knowledgeable about the community plan and zoning ordinance, as well as relevant state statutes and case law. The plan commission/committee is continuously involved in the process of recommending legislative changes in the zoning ordinance and is therefore more apt to be conversant with the “purpose and intent” of the ordinance than the zoning board.²²⁴ In some cases, the plan commission/committee makes recommendation on conditional use permits to the governing body.

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.

²²⁴ *State ex rel. Skelly Oil Co. v. City of Delafield*, 58 Wis. 2d 695, 207 N.W.2d 585 (1973)

Sample Forms



The following sample forms provide information about the information necessary to make a decision, and the legal decision standards from Wisconsin law. Please tailor the forms to better suit your local situation. Specifically, you may want to:

- Require more or less factual information from the applicant, and
- Insert additional decision standards or procedural requirements from local ordinances or by-laws.

The forms are available on-line as Word documents for easy modification at www.uwsp.edu/cnr/landcenter/pubs-documents.html

1. Hearing Appearance Slip, page 164
2. Administrative Appeal Application, page 165
3. Conditional Use Application, page 166
4. Variance Application, page 167
5. Decision Form, page 174
6. Decision Self-Audit Form, page 177

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]

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: _____
Petitioner

Date: _____

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

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: _____ Date: _____
 Applicant/Agent/Owner

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

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, 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

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 in Part 2); 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. You or your agent must convince the zoning board to make a ruling in your favor. The board 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 board may not have sufficient evidence to rule in your favor and must then deny your application.

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:

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 (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:

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):

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

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: _____

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.

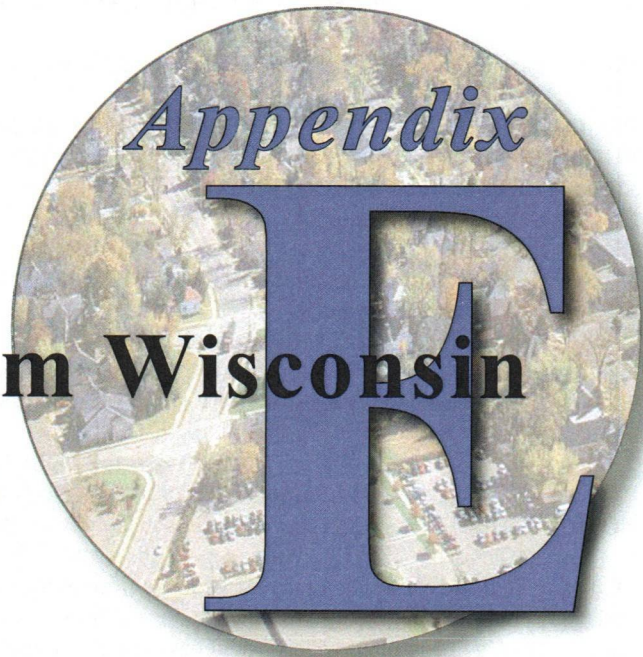
EXAMPLES

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)	Standardize conditions 1-3 as mitigation requirements in ordinance.
	5-10'	6/3	Plant/maintain screening vegetation (4)	
	11-20'	3/12	Restore 50' shore buffer (5)	
	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.

Examples from Wisconsin Communities



1. Agenda and Public Notice (adapted from Jefferson County), page 180
2. Zoning Board Staff Report (adapted from Green Lake County), page 181
3. Variance for reduced roadway setback for deck on tavern - Denied (Lincoln County), page 182
4. Variance for reduced roadway setback for garage - Granted (Lincoln County), page 191

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

PETITION FOR VARIANCE		Variance # <u>17-04</u>
Date filed <u>Oct 04</u> Fee <u>\$340.00</u>		Receipt # <u>3227</u>
Owner Information: Name _____		
Mailing Address: _____		
Daytime Telephone Number: _____		
Legal description of the property: GL <u>1/4</u>, <u>1/4</u> Sec <u>1</u>, T. <u>N</u>, R. <u>E</u>		
and/or Lot Number _____, Subdivision Name _____		
Property Address <u>W 7695 107264</u>		
Tax Parcel Number _____		PIN <u>006 3105 132 9897</u>
Zoning district <u>Aggreturc</u>		Lot size <u>1 acre</u>
Current use and improvements <u>Deck</u>		
Proposed use and improvements _____		
Ordinance section relating to variance request <u>17.22 (1)(a)(2)</u>		
Relief is requested to allow: <u>less than 110 setback to 64+107</u>		
Address each of the following criteria for granting a variance (please be specific).		
1) Unnecessary hardship is present because... <u>People are stealing everything that we have outside (lawn chairs, Umbrella's, yard swing, Garden plants, work cart, yard Birds etc.</u>		
2) Unique features of this property prevent compliance with the terms of the ordinance; they include... <u>The deck is built on the back of a garage over hang that was once a house roof - There is no way that the public can get on to it - There for our yard stuff is safe</u>		
3) A variance will not be contrary to the public interest because... <u>This deck was built and meant for our own private use to hold family get togethers only.</u>		
Names of adjoining property owners: <u>None to this area</u>		

See reverse side for additional requirements and signature line

A SCALE DRAWING MUST BE ATTACHED that accurately depicts the following:

1. The location and size of the property including all lot line dimensions
2. Indicate north
3. Show the location and names of all surrounding roads / highways
4. Show the location of all area water bodies (lakes, rivers, streams, ponds, etc.)
5. Indicate all existing buildings and mark with "EB"
6. Indicate all wells and sanitary systems and mark as such
7. Include all directly abutting properties and structures, sanitary systems, etc.
8. Show the requested change or construction and include the following measurements:
 - a. Distance from the centerline of all roads
 - b. Distance from the right-of-way of all roads
 - c. Distance to all lots lines
 - d. Distance to all water bodies
 - e. Distance from sanitary system drainfield and tanks
 - f. Distance from well

RECEIVED

OCT 20 2004

Lincoln Co. Zoning

Application will be dismissed if a scale drawing is not received in the Zoning Department within 10 days of the application deadline.

Applicants are required to clearly mark on their property the location of:

1. The proposed change or construction
2. All property lines
3. Sanitary system components (drain fields, tanks, etc.)
4. Wells
5. Other physical features pertinent to the decision

These features should be marked with high visibility flags, tape, or stakes.

Additional information beyond what has been specifically requested in this application may be required by the Lincoln County Board of Adjustment before rendering a decision. Failure to provide all requested information could result in the dismissal or denial of your application. The Lincoln County Board of Adjustment is governed by Rules of Procedure. A copy of the Rules of Procedure are available to any interested party upon request.

To the Lincoln County Zoning Administrator / Lincoln County Board of Adjustment: The undersigned hereby makes application for a PETITION FOR VARIANCE for work described and located as shown herein. The undersigned agrees that all work shall be done in accordance with the requirements of the Lincoln County Zoning Ordinance and with all other applicable County Ordinances and the laws and regulations of the State of Wisconsin. I declare that the information that I am supplying is true and accurate to the best of my knowledge and I acknowledge that this information will be relied upon for the issuance of this permit. By signing this application I am also granting permission to the zoning department staff to enter my property at any reasonable time for the purpose of inspection to assure compliance with the zoning laws relative to the issuance of this permit.

Signed: _____
property owner's signature(s) required

Date: 10-20-04

Signed: _____
property owner's signature(s) required

Date: 10-20-04

Co-Applicant information (other than owner)

Name _____

Address _____

City, ST, Zip _____

Phone # () _____

IF GRANTED, NO CONSTRUCTION SHALL BEGIN UNTIL A LAND USE PERMIT HAS BEEN ISSUED

Petition for Variance (rev 11/02)

Variance Request Staff Report

Lincoln County Zoning

Applicant:

Nature of Request: To grant an after-the-fact variance for a deck that was constructed onto a nonconforming garage that fails to meet the hwy setback.

Results of Investigation

(A) Uses of the Property

What is the property currently being used for? There is a tavern with living quarters, a beer garden, volleyball court and a private garage on the property.

Is the use a permitted use? The private living quarters and accessory structures are permitted uses in an Agriculture zoning district.

(B) Property Features

Lot Features

Zoning District: Agriculture

Size of Lot: 1 acre

Amount of Water Frontage: NA

Size and Dimensions of Buildable Area: 82' x 122' or about 10,000 sq. ft.

Septic System

Type of Septic System: Holding Tanks

Age of Septic System:

Natural Features

Slope Information: Steep adjacent to Hwy 64 and gentle to the south from the rear of the buildings.

Buffer Condition: NA

Other Relevant Features: The deck is purported to be used privately and for security of personal property. A locked building would offer more security for private property.

(C) The Public Interest

Potential positive impacts (environmental, aesthetic, safety, etc.) of the applicant's request:

Potential negative impacts (environmental, aesthetic, safety, etc.) of the applicant's request: It increases the nonconformity of an already grossly nonconforming building.

Alternative Solutions

Are there alternatives to the request made by the applicants that would meet the requirements of the ordinance? The applicants could build a garage or shed in the buildable area to secure their personal property.

Zoning Department recommendation: Based on the evidence available in the application, in our records, and by visiting the site, the Zoning Department recommends that the Board deny the request and order the removal of the deck on the basis that the property has a reasonable use already without the deck. By building the deck before obtaining a permit or a variance, the applicants have created a self imposed hardship.

Other possible actions that the Board may take: None, as staff feels that the request does not fulfill all three of the necessary elements for consideration of a variance (i.e. unnecessary hardship and public interest protection are not met).

Applicable Ordinance Sections

17.22 SETBACKS. (Am. #326-98)

(1) HIGHWAY SETBACKS.

(a) Class A Highways.

1. All State and federal highways are hereby designated as Class A highways.
2. The setback from a Class A highway shall be 110' from the centerline of the highway or 50' from the right-of-way line, whichever is greater.

17.25 NONCONFORMING USES AND STRUCTURES ("GRANDFATHERING"). (Am. #326-98; #388-2002)

(1) GENERAL. These regulations apply to the modification of or addition to any structure and to the use of any structure or premises which was lawful before the passage of this code or any applicable amendment thereto. The existing lawful use of a property, structure, building or its accessory use which is not in conformity with the provisions of this chapter may continue subject to the following conditions:

- (e) No modifications or additions to a nonconforming use or structure that fails to meet side yard or highway setbacks shall be permitted unless they are made in conformity with the provisions of this chapter. For purposes of this chapter, the words "modification" and "addition" include, but are not limited to, any addition, modification, structural alteration, rebuilding or replacement of any such existing use, structure or accessory structure or use that results in an addition to the floor area or current measurable footprint of the structure. Ordinary maintenance repairs which include internal and external painting, decorating, paneling, interior remodeling and the replacement of doors, windows and other nonstructural components are allowed and not subject to review by a permit. Other structural alterations and repairs, such as replacement of roof trusses, rafters, foundational elements, and similar components are permitted but subject to review by a zoning permit under § 17.46(1)(a) provided no additions to floor area are created and the footprint of the structure is not expanded. This section further authorizes changes to the pitch of existing roofs, but it does not authorize the enclosure of decks or patios.

0801 08I	Land Records Browse	11/10/04 15:59:53 LZTMP1
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-iN 006 3105 132 9997 Town of CORNING
 Parcel 16 133105 006 002 00 00 Status: **ACTIVE**
 Adr 1
 Own 1

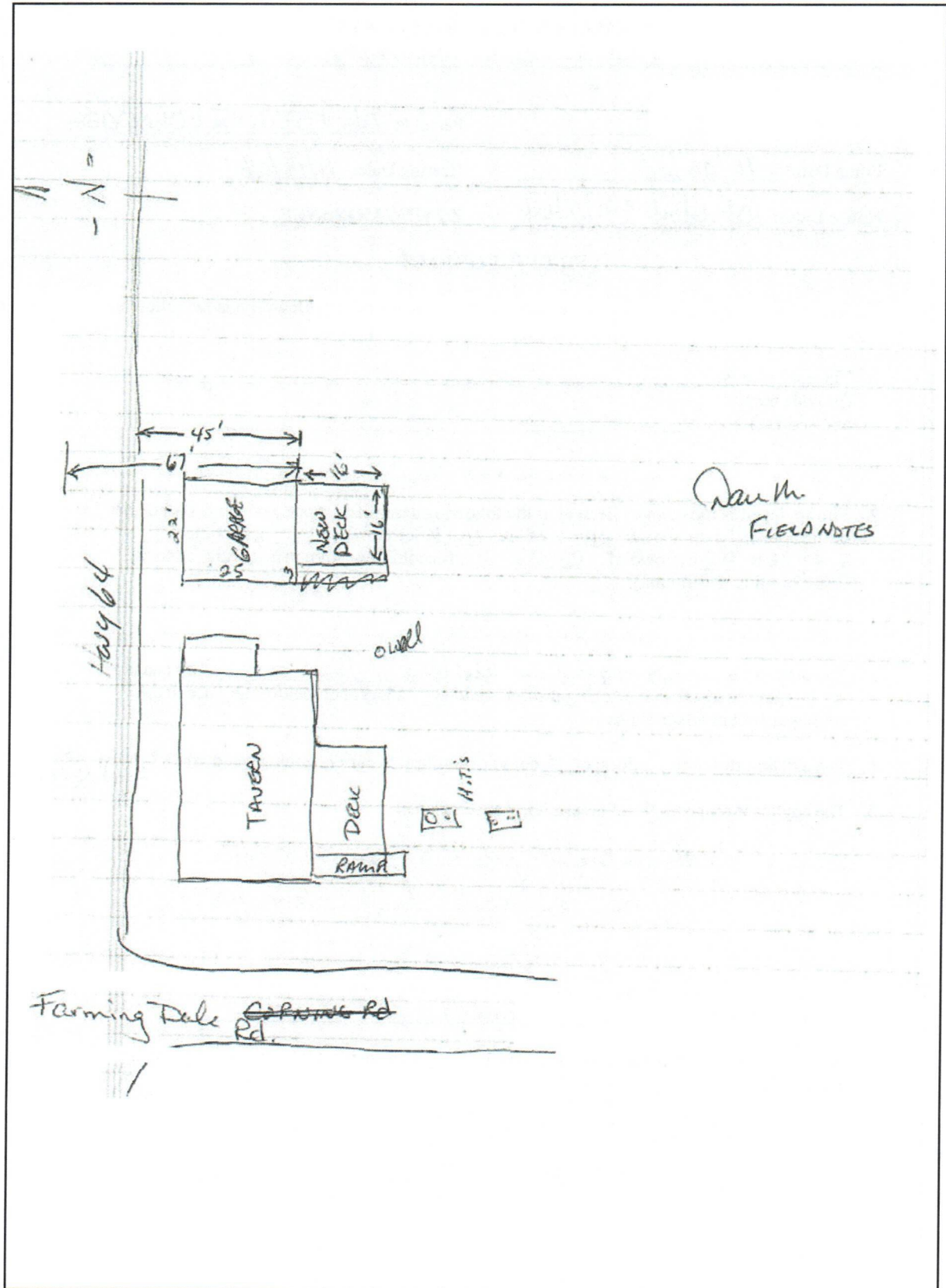
Parcel Descriptions:

1 Description(s) on File

Year	Acres	Front	Depth	Flood Line	Description
1994	1.000				
					1 SEC 13-31-05
					2 1 SQ ACRE IN THE NW COR OF
					3 THE NW 1/4 NW 1/4
					4 *C-13-6B

F1=Help F2=Assessment F3=Exit F7=Previous F8=Next F12=Cancel
 F13=Select View F14=Municipal Views F15=Reports F24=More Keys
 Positioning to Owner: +

← 208 →



**DECISION OF LINCOLN COUNTY
ZONING BOARD OF ADJUSTMENT**

Application #: 17-04 Parcel #: 06.133105.006.002
 Filing Date: 10/20/04 Hearing Date: 11/18/04
 Notice Dates: 10/26/04 & 11/2/04 **ZONING VARIANCE**

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board finds the following facts:

1. The applicant is: _____
 (provide name
 and address) _____
2. The applicant is the [owner] [lessee] of the following described property which is the subject of the application or appeal: NW 1/4 of the NW 1/4 (or Gov Lot _____), Section 13, T 31 N, R 05 E, Town of Canning, Lincoln County known as (rural address, CSM, or other description):

3. The property is presently being used as a Residence / Bar use and is a X permitted use in the zoning district ; or a _____ a legal non-conforming use in the zoning district in which it lies.
4. The existing structure _____ does; or X does not conform to current zoning standards. Due to Road Setbacks
5. The applicant proposes (brief description / attach plans):
A deck, attached to the garage, setback 67 feet from the center of State Hwy 64 & 107.
6. The applicant requests a variance to the following section of the Lincoln County Zoning Ordinance (attached): 17.22 (1)(a)(2)
7. What specific departure from the ordinance is being proposed (refer to the standards of the ordinance):
Reduce the ordinary 110' setback for State Hwy 64 & 107 to 67' from the centerline.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Board draws the following conclusions:

- A. Are the restrictions placed on the property unnecessarily burdensome, preventing the owner from using the property for a permitted purpose?

Yes or, No X. If yes, why is it unnecessarily burdensome?

- B. Do physical limitations of the property prevent compliance with the ordinance standards? Yes or, No X. Why?

is a legal buildable area on the property

- C. Could the applicant's request have potential negative impacts to surrounding lands, their uses or the environment? Yes or, No X. If yes, then how may the impacts be minimized or mitigated?

ORDER AND DETERMINATION

On the basis of the above findings of fact, conclusions of law and the record in this matter the Board orders the requested variance is ~~[granted] subject to the following conditions: [denied]~~ or ~~[held over] until _____ provided the following additional information is supplied:~~

because the hardship is self imposed and not a result of the regulations or physical property features.

The Zoning Administrator is directed to issue a zoning permit incorporating these conditions.

Any privilege granted by this decision must be exercised within 2 years of the date of the decision by obtaining necessary land use, sanitary and other permits for the proposed construction. If not exercised within the allowed time, the permit and/or other privilege shall be automatically null and void. Extension for exercise of the permit or privilege may be granted by the Board upon written request by the applicant.

This order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

This decision may be appealed by filing an action in certiorari in the Lincoln County Circuit Court within 30 days after the date of filing of this decision. Lincoln County assumes no liability for and makes no warranty as to reliance on this decision of construction is commenced prior to expiration of this 30 day period.

ZONING BOARD OF ADJUSTMENT

Signed

[Signature]
Chairperson

Attest

[Signature]
Secretary

Dated:

11/18/04

Filed:

11/18/04

PETITION FOR VARIANCEVariance # 16-04Date filed 10-10-04Fee \$340.00Receipt # 3230

Owner Information: Name _____

Mailing Address: _____

Daytime Telephone Number: _____

Legal description of the property: GL 8 $\frac{1}{4}$, $\frac{1}{4}$ Sec, T. N. R. Eand/or Lot Number D0408855, Subdivision Name N/A

Property Address _____

Tax Parcel Number ~~012-3507-282-9997~~ PIN 012-283507-005-009Zoning district Recreation Lot size 0.750 ACRESCurrent use and improvements Rental Prop. / Single PersonProposed use and improvements Rental Prop. / New GAOrdinance section relating to variance request Setback off Town RoadRelief is requested to allow: Construction of Garage, Requesting setback footage, from Lincoln City Zoning,

Address each of the following criteria for granting a variance (please be specific).

- 1) Unnecessary hardship is present because... I also own property immediately to South as Rental but no room to add garage. Existing garage at 110444 could be utilized by other rental.
- 2) Unique features of this property prevent compliance with the terms of the ordinance; they include... To keep open area for upgrade of septic system upon failure of existing.
- 3) A variance will not be contrary to the public interest because... Neighboring existing dwellings are as close or closer than new garage and will enhance property.

Names of adjoining property owners: _____

See reverse side for additional requirements and signature line

12.283507.005.009.00
 Tax Parcel # 012-3507-282-9997
 Town King
 Subdiv. _____
 Block _____
 Lot _____
 T. _____
 N. _____
 R. _____
 E. _____
 Sec. _____
 Attached copy of taxes w/ description
 Property Desc D0408855
 Last Name _____
 First Name _____
 Owner _____

A SCALE DRAWING MUST BE ATTACHED that accurately depicts the following:

1. The location and size of the property including all lot line dimensions✓
2. Indicate north✓
3. Show the location and names of all surrounding roads / highways✓
4. Show the location of all area water bodies (lakes, rivers, streams, ponds, etc.)✓
5. Indicate all existing buildings and mark with "EB"
6. Indicate all wells and sanitary systems and mark as such
7. Include all directly abutting properties and structures, sanitary systems, etc.
8. Show the requested change or construction and include the following measurements:
 - a. Distance from the centerline of all roads
 - b. Distance from the right-of-way of all roads
 - c. Distance to all lots lines
 - d. Distance to all water bodies
 - e. Distance from sanitary system drainfield and tanks
 - f. Distance from well

Application will be dismissed if a scale drawing is not received in the Zoning Department within 10 days of the application deadline.

Applicants are required to clearly mark on their property the location of:

1. The proposed change or construction
2. All property lines
3. Sanitary system components (drain fields, tanks, etc.)
4. Wells
5. Other physical features pertinent to the decision

These features should be marked with high visibility flags, tape, or stakes.

Additional information beyond what has been specifically requested in this application may be required by the Lincoln County Board of Adjustment before rendering a decision. Failure to provide all requested information could result in the dismissal or denial of your application. The Lincoln County Board of Adjustment is governed by Rules of Procedure. A copy of the Rules of Procedure are available to any interested party upon request.

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Signed: _____
property owner's signature(s) required

Date: 10-10-04

Signed: _____
property owner's signature(s) required

Date: _____

Co-Applicant information (other than owner)

Name _____

Address _____

City, ST, Zip _____

Phone # () _____

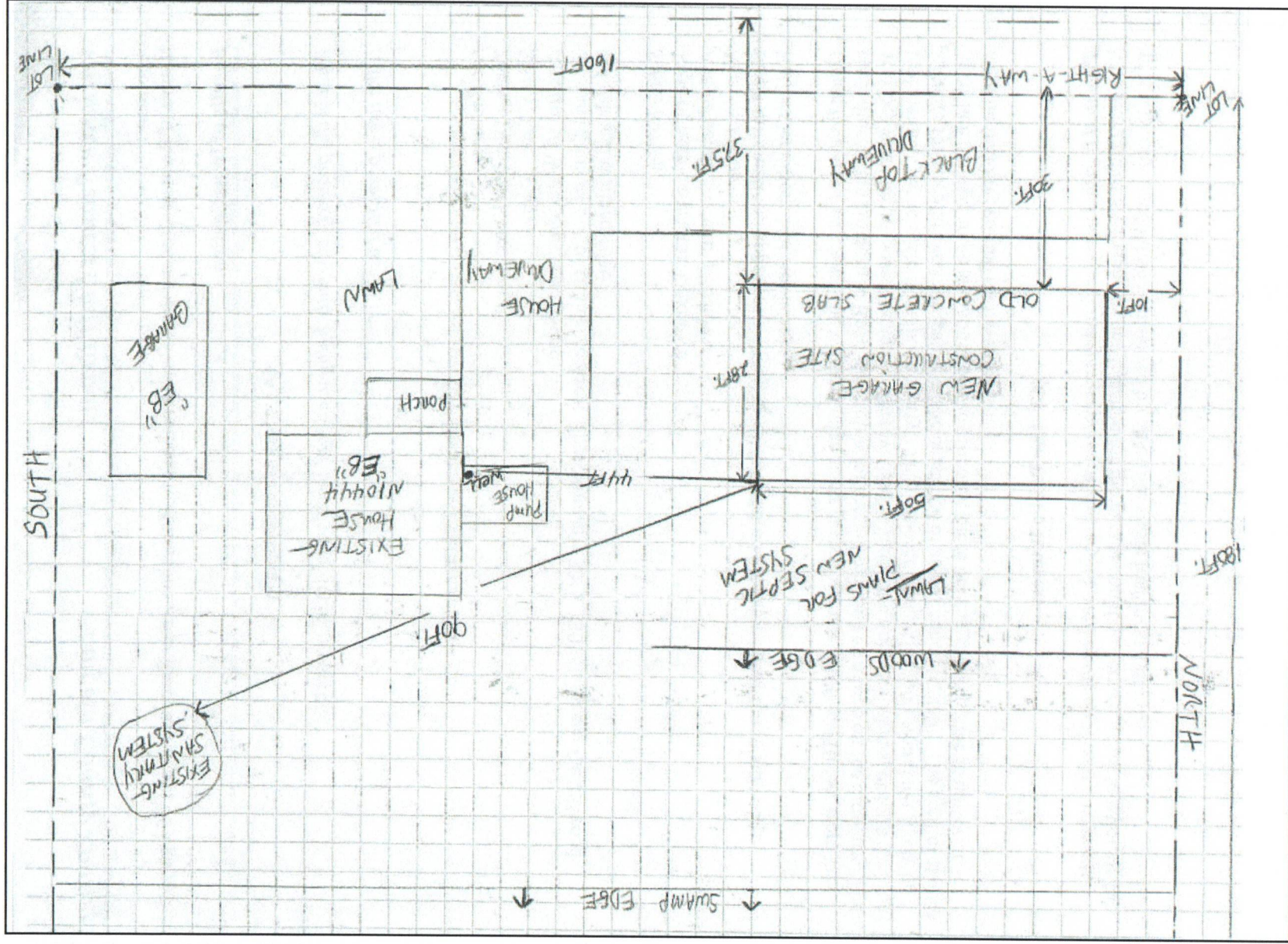
RECEIVED

IF GRANTED, NO CONSTRUCTION SHALL BEGIN UNTIL A LAND USE PERMIT HAS BEEN ISSUED

Petition for Variance (rev 11/02)

10/21/04

Lincoln Co. Zoning



Variance Request Staff Report

Lincoln County Zoning

Applicant:

Nature of Request: Reduce the 75' road setback to Horseshoe Road for construction of a garage

Results of Investigation

(A) Uses of the Property

What is the property currently being used for? Residential rental property.

Is the use a permitted use? Yes

(B) Property Features

Lot Features

Zoning District: Recreation

Size of Lot: .5 acres

Amount of Water Frontage: None

Size and Dimensions of Buildable Area: approximately 30' x 130' ; between the 75' road setback and wetland edge

Septic System

Type of Septic System: Unknown

Age of Septic System: Unknown

Natural Features

Slope Information: approximately 10 to 15 feet of moderate slope near the swamp edge

Buffer Condition: Not Applicable

Other Relevant Features: The wetland edge starts at approximately 100 to 110 feet from the centerline of the Horseshoe Road, providing for a small building envelope on the property. The area between the proposed garage and the wetland is likely the only available spot for a replacement septic system on the property. The proposed garage location would not likely be suitable for a septic system because of the existence of an old concrete slab. The applicant does have an existing garage and house on the property; these buildings occupy the majority of suitable building ground on the small lot.

(C) The Public Interest

Potential positive impacts (environmental, aesthetic, safety, etc.) of the applicant's request:
The granting of a variance in this instance for the garage could preserve another location on the property which would be best served by an onsite waste treatment system.

Potential negative impacts (environmental, aesthetic, safety, etc.) of the applicant's request:
The allowance for a garage at a reduced setback to the road could create a safety hazard as vehicles would back out of the garage directly onto Horseshoe Road.

Alternative Solutions

Are there legal alternatives?

The legal alternative location for another garage would be in the only remaining location for a potential on-site waste treatment system; 75 feet from the road near the wetland edge.

Zoning Department recommendation: Based on the evidence available in the application, in our records, and by visiting the site, the Zoning Department recommends **Approval** with the following conditions:

1. The garage be constructed at a minimum setback of 40 feet from the centerline of Horseshoe Road.
2. A soil test be performed for the area between the proposed garage and wetland edge to prove that an onsite waste treatment would be suitable for that location. If the area is proven to be unsuitable for an onsite waste treatment system then the garage be constructed at a minimum setback of 65 feet from the centerline of Horseshoe Road.

Other possible actions that the Board may take: Deny the request.

Applicable Ordinance Sections

17.22 SETBACKS. (Am. #326-98)

(1) HIGHWAY SETBACKS.

(c) Class C Highways.

1. All town roads, public streets and highways not otherwise classified are hereby designated Class C highways.
2. The setback from Class C highways shall be 75' from the centerline of such highway or 42' from the right-of-way line, whichever is greater.