

Owner \_\_\_\_\_ Town \_\_\_\_\_  
Tax Parcel # \_\_\_\_\_ Subdiv. \_\_\_\_\_  
Block \_\_\_\_\_ Lot \_\_\_\_\_  
E \_\_\_\_\_  
N, R \_\_\_\_\_  
T \_\_\_\_\_  
1/4 Sec. \_\_\_\_\_  
1/4 \_\_\_\_\_  
1/4 Sec. \_\_\_\_\_  
GL \_\_\_\_\_  
Property Desc ( \_\_\_\_\_ acres) \_\_\_\_\_  
Last Name \_\_\_\_\_  
First Name \_\_\_\_\_

# PETITION FOR VARIANCE

Variance # \_\_\_\_\_

Date filed \_\_\_\_\_ Fee \$ 450.00 Receipt # \_\_\_\_\_

Owner Information: Name \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Daytime Telephone Number: ( \_\_\_\_\_ ) \_\_\_\_\_

Legal description of the property: GL \_\_\_\_\_ 1/4, \_\_\_\_\_ 1/4, Sec \_\_\_\_\_, T. \_\_\_\_\_ N, R. \_\_\_\_\_ E

and/or Lot Number \_\_\_\_\_, Subdivision Name \_\_\_\_\_

Property Address \_\_\_\_\_

Tax Parcel Number \_\_\_\_\_ PIN \_\_\_\_\_

Zoning district \_\_\_\_\_ Lot size \_\_\_\_\_

Current use and improvements \_\_\_\_\_

Proposed use and improvements \_\_\_\_\_

Ordinance section relating to variance request \_\_\_\_\_

Relief is requested to allow: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

1) Unnecessary hardship is present because... \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

2) Unique features of this property prevent compliance with the terms of the ordinance; they include... \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3) A variance will not be contrary to the public interest because... \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Names of adjoining property owners: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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

*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: \_\_\_\_\_ Date: \_\_\_\_\_  
property owner's signature(s) required

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
property owner's signature(s) required

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**



# Variance Application Procedures

## Lincoln County Planning & Zoning

### Overview of Process

1. Application materials, scale drawing and fee are submitted to Lincoln County Planning & Zoning by the deadline
2. Applicant flags location of proposed construction and other important features on property
3. Hearing date is set and Class II notices are published in county newspapers (The Tomahawk Leader & Merrill Courier)
4. Surrounding property owners and the Township Chairman & Clerk are notified of the variance application. If the property is located in the shoreland zone, the Department of Natural Resources (DNR) is notified. The DNR may and often times do weigh in on the variance request as to whether it complies with state law and will recommend approval or denial of the request.
5. Zoning staff visits the site to complete a report and recommendation
6. Board of Adjustment visits the site the morning of the hearing
7. Testimony is taken, evidence is examined, and decision is made in public hearing
8. Appeals of decisions may be filed for the 30 days following the filing of the decision. Appeals are heard through the circuit court system. Note: This entire process takes 4 to 8 weeks and may take longer depending on the complexity of the situation.

### Step by Step Instructions...

#### Submitting an Application

The application deadline is set approximately 30 days before the hearing in order to accommodate statutory requirements for publishing and posting legal notices. Please see the current fee schedule for application fee. The specific request and the fee must be submitted to the Zoning Department by the deadline date. You may take 10 additional days beyond the application deadline to complete the scale drawing if necessary. Here are some points to remember when submitting your application:

- A **scale** drawing must be included that indicates the accurate location of: property boundaries, existing structures, wells, sanitary systems, abutting properties and structures, and the proposed construction or change
- Failure to submit the required information is sufficient grounds for dismissal or denial of the application
- The application materials should present your case as clearly as possible



#### Getting Ready for the Hearing

Here are some steps that you can take to ensure that the hearing goes smoothly:

- Do not attempt to contact Board of Adjustment members before the hearing – if you do, they may have to abstain from voting on your request

- Clearly mark all property boundaries, sanitary systems, wells, and the location of the proposed construction on your property with flags, stakes, or tape
- Making an accurate **scale** drawing is to your benefit – the Board members only look at the site briefly, and a good drawing can help you make your case in the hearing

### **The Public Hearing**

The proceedings of a public hearing resemble those of a courtroom. Here are some points to remember:

- It is always in your best interest to be present at the public hearing
- You may be represented by an attorney if you choose to hire one
- All testimony presented by the applicant, the zoning staff, or any other interested party must be taken under oath
- A court reporter will be present to record all proceedings
- Only one party may speak at a time and must be sworn in. Neighbors, the DNR or other interested citizens/entities may speak for or against the variance request
- All evidence that the applicant would like considered in the decision must be presented in the public hearing itself – conversation outside of the hearing does not constitute evidence

### **The Decision**

The Board of Adjustment will hear testimony for all variance requests and then close the public hearing. At this time they will move into deliberations and decisions. No additional testimony may be taken at this time without the permission of the Chairman. Stay at the meeting if you wish to hear the decision right away. A variance may be granted, denied, granted with modifications, or held over in some fashion. If a variance is granted, the Board of Adjustment may impose conditions on their approval. If a variance is held over, the Board may request some additional information or action before they reopen the hearing. All decisions will be transmitted in writing to the applicant with a copy of the “Decision Form” completed during the hearing. An approved variance will expire if not exercised within 2 years of the decision.

### **Appeal Opportunities**

If a decision is reached that the applicant or any interested party does not find favorable, the proper avenue of appeal is to the local circuit court. A decision of the Board may only be appealed during the 30 days following the filing of the Notice of Action. In limited circumstances, a variance request may be returned to the Board for a rehearing instead of going directly to the circuit court.

### **The Board of Adjustment**

The Board of Adjustment consists of 5 members who reside in the unincorporated areas of Lincoln County. They are appointed by the Zoning Committee for three year terms and act in a similar fashion to a jury. The Board is governed by a set of Rules of Procedure. These rules are available to any interested party upon request.

### **Can I Get a Refund?**

The fee for a variance hearing is non-refundable after it has been advertised.

- All of the fee will be refunded if an application is withdrawn PRIOR to the publishing of the notice (publishing usually occurs the Friday after the application deadline)



# The Substance of Variance Decisions

## Lincoln County Planning & Zoning

### What is a Variance?

A variance is a relaxation of a dimensional standard in land use regulations (such as setback distance, lot area, water frontage, etc.) Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden.

### What are the Applicant's Responsibilities?

The burden is on the applicant or property owner to provide verifiable facts upon which the Board of Adjustment can make its decision. A scale drawing of the property must be included with the application. The location of property lines, septic systems, wells and the proposed construction must be clearly marked on the property. It is up to you to make your case! At the hearing, any party may appear in person or be represented by an agent or attorney. A scale drawing of the property is required.

### How is a Variance Application Evaluated?

Each variance request is taken individually by the Board of Adjustment. That means that previous decisions on similar or neighboring properties, or even decisions made in the same hearing, do not set a binding precedent that must be followed. Each situation is unique. In general, the Board considers the following tests in determining whether a variance should be granted or denied:

- Will an unnecessary hardship result if the zoning standard is strictly enforced?
- Is the hardship caused by the unique physical limitations of the property in question?
- Will the public interest be protected despite relaxing the zoning regulation?

These three standards have been tested by the courts over the years. Understanding the interpretation of variance standards by the courts will help you determine whether or not to proceed with applying for a variance...

### Unnecessary Hardship

The strongest case for granting a variance occurs when the strict enforcement of the ordinance is unduly burdensome and meets the following qualifications:

- The regulation has denied all reasonable use of the property
- The hardship has not been created by the applicant
- The hardship is created by the regulation
- Loss of profit or property value is not the source of the grievance
- Additional expense incurred is not the source of the grievance



### Unique Property Feature

The zoning variance is a way that flexibility has been built into zoning, and is only appropriate when appealing from the dimensional requirements of the ordinance. For a property to qualify as having a “unique feature,” it should meet several conditions:

- Features like wetlands or steep slopes make the strongest case
- It should apply to the property, not the applicant’s personal circumstances
- It should not be a situation better addressed by a change in the zoning ordinance
- The limiting features should not be identical to conditions found on neighboring lots

### Public Interest Protected

The duty of the Board of Adjustment is to uphold the zoning ordinance. Imposing conditions or compromising on the exact details of the proposed construction may help meet the goal of protecting public interest. In general, the Board must seek to:

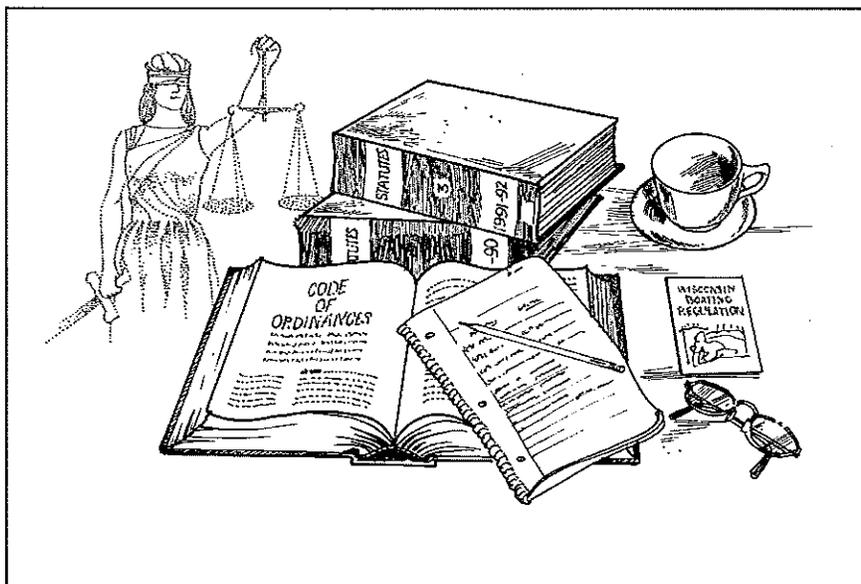
- Meet the basic objectives of the ordinance
- Consider the broad public interest, not just the local neighbors
- Make the minimum relaxation of the ordinance necessary to relieve the hardship

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### How Long Does a Variance Last?

A variance applies to a property essentially forever.\* This is why the Board of Adjustment must consider each decision very carefully and attempt to separate the applicant’s personal circumstances from the physical situation on the land. The results of a variance decision will continue to have an impact even after the individual applicant is no longer the owner of that particular property.

\* An approved variance will expire if not exercised within 2 years of the decision.



## **WHAT YOU SHOULD KNOW BEFORE YOU APPLY FOR A VARIANCE**

One of Lincoln County's greatest natural assets is its lakes and rivers. As a landowner, angler, boater, or water watcher, you can appreciate first hand that what each of us does on our water front property affects not only the value of our own property, but also that of our neighbors and the health and beauty of our lakes and rivers.

Lincoln County, like other counties in Wisconsin, have adopted regulations that meet or exceed state standards to protect water resource values and natural scenic beauty. These regulations include setbacks for structures from property lines and waterways. Appeals to these standards must meet very specific criteria prior to being granted. The Zoning Board of Adjustment (BOA) is the voluntary local governing body appointed by the county board. The BOA is authorized by law to review requests to vary the rules, in certain cases, established in the zoning ordinance.

The BOA, however, is required to review your request within the specific variance standards established by state law. You as an applicant must clearly show the board that all of these standards require the existence of an unnecessary hardship, the presence of a unique property limitation, and the protection of the public interest, i.e. water quality, scenic beauty, fish and wildlife habitat, etc.

Most often applications fail to meet the unnecessary hardship test. Quite often the term hardship is misinterpreted by applicants to mean a financial or personal inconvenience. The legal definition is really quite different.

### **An unnecessary hardship is a situation where;**

1. In the absence of a variance, and owner can make no feasible use of the property, or strict conformity is unnecessarily burdensome.
2. The hardship or difficulty must be peculiar to your parcel and not one, which affects all parcels similarly.
3. Loss of profit or financial inconvenience is not in and of itself grounds for a variance.
4. A self-imposed problem or inconvenience is not grounds for a variance.

**Prior to applying for a variance please consider the facts of your request.** Will the board be able to determine that your variance request meets the legal requirements for a variance?