



**City of Monona**  
5211 Schluter Road  
Monona, WI 53716  
Phone: (608) 222-2525  
Fax: (608) 222-9225  
www.mymonona.com

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**TO: Applicant for Zoning Variance**  
**FROM: Office of City of Monona Zoning Administrator**

This notice is being given to you to provide you with background information on the powers and duties of the City of Monona Zoning Board of Appeals. The following is not intended to constitute legal advice, nor is it meant to be an inclusive summary of relevant City ordinances (Monona Municipal Code Section 13-1-160) and State Statutes (Wisconsin Statutes Subchapter 62.23).

### **THE MONONA ZONING BOARD OF APPEALS**

The Zoning Board of Appeals (ZBA), which is required by the Wisconsin Statute, has five regular members and two alternates, appointed by the Mayor and confirmed by the City Council. The Chairperson of the Board is a member of the City Council, and the other members are Monona citizens.

The procedures followed by the ZBA are similar to a court and are known as “quasi-judicial” in nature.

### **CONDUCT OF MEETINGS**

Applicants making an appearance in front of the Board are generally asking for a variance or special exception from existing rules, or they are appealing a decision of the Zoning Administrator.

While the ZBA or City Staff can provide general information, you will have the responsibility to inform yourself of specific rules, regulations, and deadlines. The ZBA and City Staff are prohibited under State Statute from rendering legal advice.

You are not required to retain an attorney but are urged to consult with one if you have questions regarding your legal rights.

Although the procedures followed by the ZBA are quasi-judicial, the meetings are generally informal and do not follow the strict rules of evidence.

Applicants should arrive on time and be prepared to give a brief, concise explanation of what they want to do and why they are entitled to the relief they are seeking. Certain supporting materials are required to be submitted with your application (see application).

### **VARIANCES**

Most people applying to the Monona Zoning Board of Appeals are requesting an “area variance” to such zoning setback restrictions as side yards, shore yards, street yards, etc. The ZBA has very narrow and limited authority to grant such variances. To obtain a variance, the applicant must show:

- A. That the granting of the variance will not be contrary to the public interest;
- B. Special circumstances exist which would cause “unnecessary hardship” if the zoning code were to be strictly enforced.

(over)

Concerning variances, the Wisconsin Supreme Court has adopted the following rule:

“When considering an area variance, the question of whether unnecessary hardship or practical difficulty exists is best explained as whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” (Snyder v. Waukesha County Zoning Board, 74 Wis 2d 468).

What constitutes “unnecessary hardship” may depend on the facts of each case, but the following principals have been established by Court decisions.

1. The hardship or difficulty must be peculiar to the parcel in question and different from that of other parcels, not one which affects all parcels similarly.
2. Loss of profit or pecuniary hardship is not in and of itself grounds for a variance.
3. Self-imposed hardship is not grounds for a variance.
4. Violations by neighboring owners do not justify granting a variance.
5. The hardship cannot be one that would have existed in the absence of a zoning code.
6. In granting variances, as in granting conditional uses, the Board may impose special conditions to insure that the public welfare will not be damaged.

The ZBA is not permitted to grant a variance unless “unnecessary hardship” is shown by the applicant. The burden of proof is on the applicant.

### **DECISIONS OF THE BOARD**

The ZBA will make its decisions based on the evidence presented before it and in accordance with City ordinances and State Statutes. Decisions are generally made at the meeting when the request is made. A written copy of the decision will be mailed to you.

### **PUBLIC NATURE OF MEETINGS**

Meetings of the ZBA are open to the public although specific portions of the meeting may be conducted privately under the Wisconsin Open Meeting Law.

Your neighbors will be informed of your request and may appear at your hearing.

### **CONCLUSION**

We hope you find this information helpful. If you have additional questions, please contact the Zoning Administrator (1-800-422-5220) or your attorney.

**THE CITY OF MONONA  
OFFICE OF THE ZONING ADMINISTRATOR**



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**TO: The Zoning Board of Appeals  
City of Monona, Dane County, Wisconsin**

Name and Address of Application: \_\_\_\_\_

\_\_\_\_\_

*Phone Numbers:*

Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

FAX No. \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Address of Property: \_\_\_\_\_

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Plat: \_\_\_\_\_

Present Use of Property: \_\_\_\_\_

Proposed Use of Property: \_\_\_\_\_

Zoning Classification: \_\_\_\_\_

Owner's Name and Address, if other than shown above: \_\_\_\_\_

\_\_\_\_\_

Has a previous appeal or application been made with respect to this property?  Yes  No

If "yes", state nature of previous appeal or application.

\_\_\_\_\_

\_\_\_\_\_

**REQUEST FOR VARIANCE**

Attach separate sheet explaining:

1. Variance requested;
2. What special conditions exist which will cause practical difficulty or unnecessary hardship if the variance requested is not granted;
3. Why variance requested is not contrary to the public interest and will not endanger public safety and welfare;
4. Why variance requested will be in accord with the spirit of the zoning ordinance;
5. How the variance, if granted, will cause substantial justice to be done.

(over)

Each application must be accompanied by a copy of plat or plat of survey with the following information:

1. The location, boundaries, dimension, elevations, and size of property;
2. Accessory structures and utility easements;
3. Streets and other public ways;
4. Driveways and existing highway access restrictions;
5. All abutting properties;
6. Proposed detailed building plans and elevations;
7. Requested change or addition;
8. Must accompany nine (9) sets of blue prints and nine (9) copies of the application.

I swear that all of the above statement and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

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(Signature of Applicant)

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(Date)

**\* A \$250 non-refundable filing fee is required with each application.**



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## VARIANCES

Because those who draft a zoning ordinance cannot anticipate every land use question that will arise in a community, there needs to be some mechanism to give the ordinance flexibility. The board of appeal's authority to grant variances serves this purpose. A variance is permission granted by the board to build or develop in a way which is inconsistent with the dimensional standards contained in the ordinance. The variance procedure allows the impact of the general rules to be varied in response to unusual circumstances which constitute "unnecessary hardship" or "practical difficulty".

In deciding variance requests, the board of appeals acts as an agent of the local government, not the property owner. It is the board's duty to preserve the zoning ordinance without modification as far as possible while ensuring substantial justice for the individual.

A variance is not a convenience to the property owner. Nor should a variance be granted for reasons common to other properties. The appropriate remedy in this case would be an amendment to the ordinance. A variance for a use that is different than the ordinance allows (a "use variance") would alter the legislative intent of the ordinance. An amendment is the appropriate remedy here too. Variances are not intended to be granted frequently. The applicant for a variance must clearly show the board that his or her request is due to the very unusual qualities of the property and that it satisfies the variance standards.

What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each individual appeal. However, in applying the statutory standards, the board should keep in mind the following principles established by court decisions:

- (a) The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly. Generally, hardship arises because of the unusual shape, topography or elevation of a parcel or because the property was created before the passage of the zoning ordinance and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard and setback requirements are observed. See, for example, *Thalhofer v. Patri*. 240 Wis. 404 (1942).
- (b) Loss of profit or pecuniary hardship is not in and of itself grounds for a variance. See, *Snyder v. Waukesha County Zoning Board*, in principle (f).
- (c) Self-imposed hardship is not grounds for a variance. Reductions resulting from the sale of a property reducing the remainder below buildable size or cutting off existing access to a public highway or deed restrictions imposed by the owner's predecessor in title are generally considered to be self-imposed hardships. See, *State ex rel. Markdale Corp. v. Board of Appeals*, in principle (f).
- (d) Violations by or variances granted to neighboring owners do not justify a variance. See, *Von Elm v. Board of Appeals*, 258 App. Div. 989 (N.Y. 1940).

(over)

- (e) The hardship cannot be one that would have existed in the absence of a zoning ordinance. However, sometimes a legitimate hardship results from the interaction of the provisions of the zoning ordinance with other actions or regulations adopted by public authorities. See, *Thalhofer v. Patri*, in (a) on page 1.
- (f) Use variances should not be granted by the board. A change in the use requires a zoning map amendment. Granting of a use variance is not permitted. See *Snyder v. Waukesha County Zoning Board*, 74 Wis. 2d 154 (1965). If a change in use is necessary to make feasible use of the land, the applicant should file a petition for zoning amendment. See, *State ex rel. Markdale Corp. v. Board of Appeals*, 27 Wis. 2d 154 (1965). Use variances are specifically prohibited in floodplain and shoreland districts established under ss. 59.971 and 87.30, Wis. Stats. and ss. NR 115.05(6)(e) and NR 116.21(4), Wis. Adm. Code.
- (g) In granting variances, as in granting conditional uses, the board may impose special conditions to ensure that the public welfare will not be damaged. The power of a board of appeals to attach conditions to a variance, to protect adjoining property and preserve the essential character of the neighborhood, is well established, but the power is not unlimited. The conditions must relate reasonable to the proper objectives of the zoning ordinance. 3 Anderson, *American Law of Zoning 2d*, (1977) ss. 18.68 and 18.69.
- (h) Variances attach to the property as a permanent right. Once a variance is granted, it is permanently applicable to the property. A new owner of the property may make use of a variance that was granted to the previous owner if all of the conditions that are attached to the variance are met. See *Goldberg v. City of Milwaukee Bd. of Zoning App.*, 115 Wis. 2d 517, 340 N.W. 2d 458 (Ct. App. 1983).