

Village of Stratford

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ZONING VARIANCE PROCEDURE Zoning Board of Appeals

Reference: Ordinance 20-2 and 590-121 through 590-125.

Introduction: The Zoning Board of Appeals is appointed by the Village board to hear and decide appeals when a permit is denied by the Zoning Administrator. The Zoning Board of Appeals has the power to grant variances to the term of a zoning ordinance.

Appeal: The Zoning Board of Appeals has the authority to review zoning ordinance interpretations made by the Zoning Administrator. In exercising this authority, the board is not authorized to modify the zoning ordinance or to relieve the applicant from the terms of the zoning ordinance. The Zoning Board's role is to determine whether, as applied to the particular set of facts and circumstances presented, the interpretation and application of the zoning ordinance is in accord with the term of the ordinance or state law.

Variance: A variance provides an increment of relief within an area, -- a physical dimensional restriction -- such as a building height, setback, etc. A variance may not be granted for reasons common to other properties. A variance is not a convenience to the property owner. A variance granted stays with the property.

The applicant for a variance has the burden to prove that all three statutory standards are met.

1. Existence of an unnecessary hardship;
2. Presence of a unique property limitation; and
3. Protection of the public interest.

Notice: Notice of a public hearing must be given to all interested parties, including the applicant, the owners of the affected property, all adjacent property owners, the local Plan Commission, and affected state agencies. Publication as a Class One Notice is required at least 10 days but not more than 30 days prior to the hearing.

Decision: The Zoning Board of Appeals may take up to 30 days from the Public Hearing date to reach a decision. The Board may deny the request or make approval with conditions and/or restrictions. When the Board has approved a variance, such approval will become void after 12 months of the decision unless the reason for the variance is commenced, i.e. construction is underway.

Meeting Fee: A non-refundable \$150.00 fee is required.

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For further information, please contact:

Village of Stratford Zoning Administrator
715-687-4118
stratfordpubworks@stratfordwi.com

APPLICATION FOR ZONING VARIANCE

Village of Stratford

NOTE: Applicant or a representative must be present at the Public Hearing held by the Zoning Board of Appeals.

Name of owner or lessee requesting variance: _____

Name of business (if applicable): _____

Requestor's address: _____

Daytime phone: (_____) _____

Address and legal description of property: _____

Zoning classification: _____ -- _____

Reason for zoning variance: _____

Names and addresses of abutting and opposite property owners:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

I attest that I am the owner of the property or an agent authorized by the property owner.

Signature (check one) >>> *OWNER* or *AUTHORIZED AGENT* _____ *Date*

Attachments: Site plan with dimensions, buildings, streets, etc. \$150.00 fee

NOTE: Meeting date and time are based on the availability of the members of the Zoning Board of Appeals.

OFFICE USE ONLY

Tax key number: 5 7 . _____

Publication of Class One Notice: ____/____/____ (Record Review)

Public Hearing – Date: ____/____/____ Time: _____ p.m.

Application and \$150.00 received: ____/____/____ by _____

Chapter 20. Boards, Commissions and Committees

§ 20-2. Zoning Board of Appeals.

A. Establishment.

- (1) A Zoning Board of Appeals shall be appointed as specified in § 62.23(7)(e), Wis. Stats. The Zoning Board of Appeals shall consist of five citizen members appointed by the Village President, subject to confirmation by the Village Board, for a three-year term of office. The members shall serve with such compensation as determined by the Village Board and shall be removable by the Village Board for cause upon written charges and upon public hearing. The Village President shall designate one of the members Chairperson.
- (2) The Village President shall appoint, subject to confirmation by the Village Board, for staggered terms of three years, two alternate members of such Board, in addition to the five members above provided for. Annually, the Village President shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one member of the Board so refuses or is absent.^[2]
[2] Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

B. Powers. The Zoning Board of Appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Code or Floodplain Zoning Code.^[3]
[3] Editor's Note: See Ch. 590, Zoning, and Ch. 547, Floodplain Zoning. Original Sec. 2-4-2(b)(2), which immediately followed this subsection and dealt with special exceptions, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. II).
- (2) To authorize upon appeal in specific cases such variance from the terms of the Village zoning regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit of the Zoning Code shall be observed, public safety and welfare secured and substantial justice done; provided, however, that no such action shall have the effect of establishing in any district a use or uses not permitted in such district.
- (3) To permit the erection and use of a building or premises in any location, subject to appropriate conditions and safeguards in harmony with the general purposes of the Zoning Code, for such purposes which are reasonably necessary for public convenience and welfare.
- (4) The Zoning Board of Appeals may reverse or affirm wholly or in part or may modify any order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its opinion ought to be made. If a quorum is present, the Zoning Board of Appeals may take action by a majority of the members present. The grounds of every such determination shall be stated and recorded. No order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than six months from the date of such order unless the land use permit is obtained within such period and the erection or alteration of a building is started or the use is commenced within such period.^[4]
[4] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- #### C. Meeting and rules. All meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. All hearings conducted by said Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The Board shall adopt its own rules of procedure not in conflict with this section or with the applicable Wisconsin Statutes.^[5] *[5] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- #### D. Offices. The Village Board shall provide suitable offices for holding hearings and the preservation of records, documents, and accounts.^[6]

[6] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

[1] Editor's Note: See also Ch. 590, Zoning, Art. XV, Appeals.

Chapter 590. Zoning

Article XV. Appeals and Variances

§ 590-121. Appeals; powers of Zoning Board of Appeals.

- A. Scope of appeals. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Village affected by any decision of the administrative officer. Such appeal shall be taken within reasonable 30 days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof, together with payment of a filing fee as may be established by the Village Board. The officer(s) from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record of appeal upon which the action appealed from was taken.
- B. Stay of proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- C. Powers of Zoning Board of Appeals. In addition to these powers enumerated elsewhere in this Code, the Zoning Board of Appeals shall have the following powers:^[1]
- (1) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Building Inspector.
 - (2) Variances. To hear and grant appeals for variances in accordance with the procedures and requirements of § 590-124.^[2]
[2] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).
 - (3) Interpretations. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (4) Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided that no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (5) Unclassified uses. To hear and grant applications for unclassified and unspecified uses, provided that such uses are similar in character to the principal uses permitted in the district and the Plan Commission has made a review and recommendation.
 - (6) Temporary uses. To hear and grant applications for temporary uses in any district, provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses and the Plan Commission has made a review and recommendation. The permit shall be temporary, revocable, and subject to any condition required by the Zoning Board Appeals and shall be issued for a period not to exceed 12 months. Compliance with all other provisions of this chapter shall be required.
 - (7) Permits. To reverse, affirm wholly or partly, or modify the requirements appealed from and issue or direct the issue of a permit.
[1] Editor's Note: See also § 20-2 of this Code.

§ 590-122. Hearing on appeals.

The Zoning Board of Appeals shall fix a reasonable time for the hearing, cause notice thereof to be published in the official newspaper not less than seven days prior thereto, and cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five days prior to the hearing to the fee owners of records of all land within 100 feet of any part of the subject building or premises involved in the appeal.

§ 590-123. Decisions.

- A. Time frame. The Zoning Board of Appeals shall decide all appeals and applications within 30 days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
- B. Conditions. Conditions may be placed upon any zoning permit ordered or authorized by this Board.
- C. Validity. Variances, substitutions or use permits granted by the Board shall expire within six months unless substantial work has commenced pursuant to such grant.

§ 590-124. Variances.

A. Purpose.

- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this chapter would cause him undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
- (2) The Zoning Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.
- (3) For the purposes of this section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.

B. Application for variance. The application for variance shall be filed with the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

- (1) Name and address of applicant and all abutting and opposite property owners of record.
- (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
- (3) Address and description of the property.
- (4) A site plan showing an accurate depiction of the property.
- (5) Additional information required by the Plan Commission, Village Engineer, Zoning Board of Appeals or Zoning Administrator.
- (6) Fee receipt in the amount as set by the Village Board.

C. Public hearing on application. The Zoning Board of Appeals shall conduct at least one public hearing on the proposed variance. Notice of such hearing shall be given not more than 30 days and not less than 10 days before the hearing in one or more of the newspapers in general circulation in the Village, and due notice shall be given to the parties in interest, the Zoning Administrator and the Plan Commission. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Board shall thereafter reach its decision within 30 days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator, Plan Commission and Village Board.

D. Action of the Zoning Board of Appeals. For the Board to grant a variance, it must find that:

- (1) Denial of the variance may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed.
- (2) The conditions upon which a petition for a variance is based are unique to the property for which a variance is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
- (3) The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property.
- (4) The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
- (5) The proposed variance will not undermine the spirit and general and specific purposes of this chapter.

E. Conditions. The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this section.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

§ 590-125. Review by court of record.

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Zoning Board of Appeals.