

**TOWN OF RIVER FALLS
PIERCE COUNTY, WISCONSIN
Petition for Variance**

Date filed _____

\$_____ fee paid (payable to the Town of River Falls)

Applicant/agent

Owner

Contractor

Name _____

Address _____

Phone _____

Legal description of property: ____ 1/4, ____ 1/4, S ____/T ____/ R ____

Address of property (fire number and road name) _____

Lot area & dimensions: _____ square feet, _____ x _____ feet

Zoning district _____

Current use & improvements _____

Proposed use & improvements _____

Terms of Ordinance (Section #)

Variance Requested

Address each of the following criteria for granting of a variance. (attach additional pages as necessary) :

1) Unnecessary hardship is present because...

2) The hardship is due to unique features of this property in that ...

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

Attach a plat or other map of your site, and detailed construction plans or use the reverse side of this application to describe your project and its location.

Signed: _____
 Applicant/Agent/Owner

Date: _____

ZONING VARIANCE

PETITION FORM AND NOTICE OF REQUIREMENTS

Variance

A variance is a relaxation of a dimensional standard in land use regulations (e.g., setbacks, lot area, height, etc.). Variances are decided by the 5-member Board of Appeals which is appointed by the Town Board Chair with approval of the Town Board of Supervisors.

The Board of Appeals is known as a quasi-judicial body because it functions almost like a court. Its decisions must comply with specific criteria provided in state laws. The Board of Appeals must apply town ordinance provisions as they are written. Its job is not to compromise

for a property owner's convenience but to apply appropriate legal standards 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 showing that your project meets the legal criteria for a variance as outlined below (Three Step Test); and
- 4) stake out lot lines, proposed building footprint and all other features of your property related to your request so that the Board may inspect the site.

Following these steps, the Town Clerk will publish notice of your request for a variance in the *River Falls Journal* noting the location and time of the required public hearing. The burden will be on you as property owner to provide verifiable facts upon which the Board may base its decision. At the hearing, any party may appear in person or be represented by agent or attorney. If any of these requirements are not met or if you or your agent do not appear at the public hearing, the Board must deny your request for a variance and your fee will be forfeit.

Three Step Test

To qualify for a variance, you must meet all three requirements of a three step test:

1) Strict application of an ordinance requirement (dimensional standard) will result in unnecessary hardship. Wisconsin case law describes hardship as being present where, in the absence of a variance, no reasonable use can be made of the property. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then the test is not met and a variance cannot be granted. An applicant may not claim hardship because of conditions which are self-imposed (for example, splitting a lot to create two substandard lots and then claiming hardship). Courts have also determined that loss of profit or financial hardship do not, by themselves, justify a variance. Decks and similar minor accessory structures are not essential to the reasonable use of property and are not eligible for variances.

2) The hardship is due to **unique physical limitations of the property**, i.e. compliance with the ordinance is prevented by limitations of the property (steep slopes, wetlands, etc.) which are not generally shared by other properties. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations and prior variances do not provide a basis for granting a variance. You will be asked to demonstrate that alternative project designs or locations on the parcel which comply with ordinance requirements are not feasible. Minor property limitations which prevent ordinance compliance and are common to a number of properties, may be addressed by amendment of the ordinance.

3) A variance may not be granted which results in **harm to public interests**. In applying this test, the Board must consider the public interest factors listed as objectives in the purpose statement of the ordinance. For the Town of River Falls Agricultural Zoning Ordinance these include, in part, to preserve productive farmlands, to protect farming operations from conflicting land uses, to maintain agriculture as a permanent, viable land use and economic activity, and to prevent inefficient spread of urban development into agricultural areas.

If You Qualify for a Variance

- The Board may grant only the **minimum variance** which preserves a reasonable use of a parcel for its owner.
- It may impose **conditions** on project design, construction activities or operation of a facility to assure that public interests are protected.
- A variance **decision may be appealed** to circuit court by an aggrieved party within 30 days of filing of the decision in the office of the board. For this reason you may choose to delay construction on your project until after the appeal period has expired in order to minimize the risk that the court may overturn the Board decision and void your variance.
- Because a property rather than its owner may qualify for a variance (unique property limitations test), a variance **transfers to subsequent property owners**.

Judicial Review

Following are the general review standards which courts have used to decide appeals of board of appeals decisions. You might consider these points to determine whether any decision you have an interest in is likely to be reversed on appeal.

- ⇒ Did the Board decide a matter which it is empowered by statute or ordinance to act on (subject matter jurisdiction)?
- ⇒ Did the Board follow proper procedures (e.g. notice , hearing, reviewable record, open meeting law, etc.)?
- ⇒ Did the Board apply proper standards in making the decision (e.g. 3 step test for a variance)?
- ⇒ Was there a rational basis for the decision (could a reasonable person have reached this conclusion)?
- ⇒ Is there evidence in the record (facts) to support the decision?

Site Map/Project Plan

Site features & topography

lot lines
waterline
ordinary high water mark
floodplain
roadway

Improvements

buildings
septic field
well
utilities
foot path
stairway
deck
patio