

## VARIANCE APPLICATION

A variance is a relaxation of a standard in a land use ordinance. Variances are decided by the Zoning Board of 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 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:

**Complete an application** form and submit a non-refundable \$200.00 fee;

1. **Provide detailed plans** describing your lot and project (location, dimensions and materials);
2. **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance; and
3. **State 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 Village will publish notice of your request for a variance in the Village'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 the 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. If any of these requirements are not met or if you or your agent's do not appear at the public hearing, the board must deny your request for a variance. Variances granted by the Board shall expire with six (6) months unless substantial work has commenced pursuant to such grant.

VILLAGE OF LUCK  
 PO BOX 315, 401 MAIN ST, LUCK, WI 54853, (715) 472-2221

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The following information and documentation must be submitted to the Village Administrator. Please type this information if possible.

|                                                                                                                                                                                                                                                                                                     |                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Name of petitioner<br>(Must be property owner)                                                                                                                                                                                                                                                      |                                  |
| Address of property<br>for variance                                                                                                                                                                                                                                                                 |                                  |
| Parcel number                                                                                                                                                                                                                                                                                       |                                  |
| Legal Description                                                                                                                                                                                                                                                                                   |                                  |
| Lot dimensions & area                                                                                                                                                                                                                                                                               | _____ x _____ ft. = _____ sq ft. |
| Mailing address of petitioner                                                                                                                                                                                                                                                                       |                                  |
| Daytime phone number of petitioner                                                                                                                                                                                                                                                                  |                                  |
| Present zoning classification                                                                                                                                                                                                                                                                       |                                  |
| Ordinance number to be varied                                                                                                                                                                                                                                                                       |                                  |
| Description of any prior petition for<br>appeal, variance or conditional use:                                                                                                                                                                                                                       |                                  |
| Description and location of all<br>nonconforming structure & uses on<br>the property:                                                                                                                                                                                                               |                                  |
| Fully describe your variance<br>request.                                                                                                                                                                                                                                                            |                                  |
| Ordinance 10-1-193 states no variance shall be granted unless the Board of Appeals finds beyond a reasonable doubt that all the following facts and conditions exist. Please answer the following questions so the Zoning Board is assured the variance, if granted, meets these required findings. |                                  |

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| <p>(1) Denial of variation 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 the Zoning Code should be changed. *See note at end of application regarding recent court cases pertaining to unnecessary hardship.</p> |  |
| <p>(2) The conditions upon which a petition for a variation is based are unique to the property for which variation 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.</p>                                                                                                                                                                                                                                                                 |  |
| <p>(3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |

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| <p>(4) The granting of the variation 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.</p> |  |
| <p>(5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.</p>                                                                           |  |

Alternatives

Describe alternatives to your proposal such as other locations, designs and constructions 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.

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Where applicable, attach plans detailing:

- Property lines
- Vegetation removal proposed
- Contour lines (2 ft. interval)
- Ordinary highwater 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: \_\_\_\_\_

When completed return to: Luck Village Hall, 401 S Main St., PO Box 315, Luck, WI 54853.

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\* Unnecessary Hardship

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 *Ziervo gel* 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.
  - o Zoning map amendments can change zoning district boundaries so as to allow uses provided in other zoning districts.
  - o Zoning text amendments can add (or delete) permitted or conditional uses allowed in each zoning district.