



Village of Black Earth

1210 Mills St. • P.O. Box 347

BLACK EARTH, WI 53515

P: 608-767-2563 F: 608-767-2064

Zoning Variance Notice and Application

A variance is a relaxation of a dimensional standard in a zoning ordinance (e.g., setbacks, lot area, height, etc.). Variances are decided by a zoning board of adjustment/appeals that must follow rules of due process and functions almost like a court. The board's duty is not to compromise ordinance requirements for a property owner's convenience but to apply legal standards for granting a variance to a specific fact situation. Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden on use of property. It is not appropriate to contact individual board members regarding a pending decision. You will be asked to provide written materials and testimony at the public hearing in support of your petition for a variance.

Process

At the time of application you will be asked to:

1. **Complete an application** form and submit a \$350 fee for residential and commercial;
2. **Provide detailed plans** describing your lot and project (location, dimensions, materials, limiting site conditions, etc.), see samples attached;
3. **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance (three-step test below);
4. **Stake lot lines**, the proposed building footprint and other features of your property related to your request so that the zoning board may inspect the site;
5. **Provide names and addresses of property owners** located within 100 feet of all property lines.

Following completion of the above steps, the zoning agency will publish notice of your request for a variance in the village's official newspaper describing your project and 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. You must provide information to show that you qualify for a variance. At the hearing, you and other interested parties may appear in person or may be represented by an agent or attorney. If you or your agent does not appear at the published hearing, the board must deny your request for a variance and your fee will be forfeited.

Three-Step Test

To qualify for a variance, your property must meet the following requirements:

- 1) Unnecessary Hardship – Strict application of an ordinance requirement (dimensional standard) must 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. In some more extreme cases open space uses may be the only reasonable use of a property while in others a scaled down home and some relaxation of a setback requirement may provide a reasonable use. The zoning board will balance public interest in preserving the objectives of the ordinance and private interests in a property in determining which uses are reasonable. If a parcel as a whole (but not necessarily each portion of the parcel) provides some reasonable use for its owner, then this test is not met and a variance cannot be granted. An applicant may not claim 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 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. Hardship Due to Unique Physical Limitations of the Property – Hardship must be due to unique physical limitations of the property, i.e. compliance with ordinance requirements is prevented by limitations (steep slopes, wetlands, etc.) that 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 violation, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Minor property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amendment of the ordinance.
3. No Harm to Public Interests – A variance may not be granted which results in harm to public interests. In applying this test, the board must consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community. These interests are listed as objectives in the purpose statement of an ordinance and may include general public health, safety and welfare as well as more specific issues such as environmental protection, clean drinking water and other concerns.

If Your Property Qualifies For a Variance

- Minimum variance. The boards may grant only the minimum variance that preserves a reasonable use of the parcel for its owner.
- Conditions on development. It may impose limitations on project design, construction activities or operation of a facility as mitigating measures to assure that public interests and neighboring properties are protected.
- Appeals. A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing the decisions in the office of the board. Consider delaying construction until the appeal period has expired to minimize the risk that the court may overturn the board decision and void your variance.
- Expiration of permit. No order of the Board of Appeals granting a variance shall be valid for a period longer than six (6) months from the date of such order unless the building permit is obtained within such period and the erection or alteration of a building is started or the use is commenced within such period.
- Transfers of rights. Because a property (rather than its owner) may qualify for a variance, a variance transfers with the property to subsequent owners.

Judicial Review

Courts review zoning board decisions. Consider these standards for review to determine whether a decision of interest to you is likely to be reversed on appeal.

- √ **Subject matter of jurisdiction.** Did the board decide a matter that it is empowered by statute or ordinance to act on?
- √ **Proper Procedure.** Did the board follow proper procedures (notice, hearing, record of decision, open meeting law)?
- √ **Proper standards.** Did the board apply proper standards in making the decision (3 steps test for a variance)?
- √ **Rational basis.** Could a reasonable person have reached this conclusion?
- √ **Evidence in the record.** Do facts in the record of the proceedings support the decision?

“A successful variance applicant must prove that he or she has no reasonable use of the property without the requested variance.”

VARIANCE APPLICATION

ZONING BOARD OF ADJUSTMENT/APPEALS

Petition # _____ Date Filed _____ \$_____ fee paid (payable to Village of Black Earth)

Owner/Agent

Contractor

Name		
Address		
Phone		

Tax Parcel number _____

Legal description ____ 1/4, ____ 1/4, S _____, T _____ N, R _____ E, Village of Black Earth

Lot Area and dimensions: _____ sq. feet Zoning District

Current use and improvements

Nature and disposition of any prior petition for appeal, variance or conditional use

Description of all nonconforming structures and uses on the property

Terms of Ordinance (requirement and section #)

Attach a detailed description of variance requested.

Unnecessary hardship is present because

Compliance with the terms of the ordinance is prevented by unique features of this property

A variance will not be contrary to the public interest because

Attach construction plans detailing:

- Property Lines proposed
- Well and sanitary system
- Ordinary high water mark
- Floodplain & wetland boundaries
- Dimensions & locations of existing & proposed structures
- Utilities, roadways & easements
- Contour lines (2 ft. interval)
- Location & type of erosion control measures
- Any other construction related to your request
- Vegetation removal
- Location & extent of filling/grading

I certify that the information I have provided in this application is true and accurate.

Date: _____

Signature of Applicant or Appellant

Remit to: Village of Black Earth
Zoning Board of Appeals, 1210 Mills St., Black Earth, WI 53515