

## **CITY OF ELKHORN ZONING VARIANCE APPLICATION FORM AND NOTICE OF REQUIREMENTS**

### **Variance**

A variance is a relaxation of dimensional standards in land use regulations (e.g., setbacks, lot area, height, etc.) Variances are decided by the Board of Appeals. 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 City of Elkhorn ordinance provisions as they are written.

The Board's 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**

Prior to applying to the Board of Appeals for a variance you will need to have been denied a zoning permit application. The following are required to be submitted with the variance application:

- 1) **complete an application form and submit a \$325 fee** (made payable to City of Elkhorn); **(Filing fee is not refundable)** including a written statement showing that your project meets the legal criteria for a variance as outlined on the next page (Five Step Test);
- 2) **provide a plat of survey.** The plat must show the location of the buildings on the lot, proposed buildings, addition, etc. and the distances to the lot lines, body of water and roads;
- 3) **provide a list of adjacent property owners.** Name and address of the appellant or applicant and all abutting and opposite property owners of record;
- 4) **provide a detailed map and directions** to your property from Elkhorn;
- 5) **stake lot lines**, proposed building footprint and all other features of your property related to your request so that the Board may inspect the site;
- 6) **provide detailed construction plans, and photos;**

Following the above steps, the City of Elkhorn will publish notice of your request for a variance in the City's official newspaper noting the location and time of the required public hearing. The City of Elkhorn will also notify abutting property owners. The hearing date is set by the Board of Appeals. Hearings will be on the third Thursday of the month at 6:00 p.m. DUE TO LEGAL PUBLICATION REQUIREMENTS THESE HEARINGS ARE SUBJECT TO FILING DEADLINE DATES. THEREFORE, IT IS IMPORTANT THAT YOU CHECK WITH THE ZONING DEPARTMENT FOR THE DEADLINE DATES.

The burden will be on you, as the property owner, to provide verifiable facts upon which the Board may base its decision. It is necessary for the applicant or a representative to be present at the hearing. 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 may deny your request for a variance and your fee will be forfeited. Cancelled hearings require another filing fee of \$325 and postponed hearings require another filing fee of \$100 to cover administrative costs and publication expenses.

### **Five Step Test**

To qualify for a variance, the Board of Appeals must determine if your request meets **all** five criteria of the five-step test:

**(1) Preservation of Intent.** No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.

**(2) Exceptional Circumstances.** 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 Ordinance should be changed.

**a) Unique Property Limitations:** The variance request is due to unique physical limitations of the property, i.e. compliance with the Ordinance(s) is prevented by limitations of the property (steep slopes, drainage or waterways, wetlands, soil types, densely wooded areas, utility and other easements, unusual configuration/dimensions of lot, etc.) which are not generally shared by other properties. **Personal circumstances of an applicant (growing family, personal storage issues; etc.) are not a factor in deciding variances.** Nearby ordinance violations and prior variances do not provide a basis for granting a variance. Minor property limitations, which prevent ordinance compliance and are common to a number of properties, may be addressed by amendment of the Ordinance(s).

**b) Unnecessary Hardship:** Strict application of an ordinance requirement (dimensional standard) would unreasonably prevent the owner from using the property for a permitted purpose. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner. You will be asked to demonstrate that 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. The Board of Appeals will evaluate the hardship in light of the purpose of the zoning restriction at issue. 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. The property owner bears the burden of proving unnecessary hardship.

**(3) Economic Hardship and Self-Imposed Hardship Not Grounds for Variance.** No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

**(4) Preservation of Property Rights.** 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.

**(5) Absence of Detriment.** That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this chapter or the public interest.

### **DECISION**

The Board of Appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant. Variances granted by the Board of Appeals shall expire within six (6) months unless substantial work has commenced pursuant to such grant. Since a variance decision may be appealed to the circuit court by anyone aggrieved with the board's decision within 30 days of the decision, the applicant shall proceed with construction only at his/her own risk within the appeal period.

### **JUDICIAL REVIEW**

In accordance with Section 62.23(7) of the Wisconsin Statutes and amendments thereto any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals, or any taxpayer or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, 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 Board of Appeals.

**PETITION FOR VARIANCE  
CITY OF ELKHORN BOARD OF APPEALS**

DATE FILED: \_\_\_\_\_ \$325.00 made payable to City of Elkhorn  
Owner Applicant: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Legal description of property: \_\_\_\_\_ 1/4, \_\_\_\_\_ 1/4, S \_\_\_\_\_, T \_\_\_\_\_ N, R \_\_\_\_\_ E, City of Elkhorn  
Physical Address: \_\_\_\_\_  
Tax parcel number: \_\_\_\_\_  
Lot area & dimensions: \_\_\_\_\_  
Zoning District (s): \_\_\_\_\_  
Project Description: \_\_\_\_\_  
Required by Ordinance Variance Requested

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NO VARIANCE TO THE PROVISIONS OF THE CITY OF ELKHORN MUNICIPAL CODE SHALL BE GRANTED BY THE BOARD OF APPEALS UNLESS IT FINDS THAT ALL OF THE FOLLOWING FACTS AND CONDITIONS EXIST.

**(1) Preservation of Intent.** The variance request is consistent with the purpose and intent of the City of Elkhorn Municipal Code because . . .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(2) Exceptional Circumstances.**

**(2a) Unique Property Limitations.** Compliance with the terms of the Municipal Code is prevented by unique features of this property . . .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(2b) Unnecessary Hardship.** Unnecessary hardship is present because . . . .

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(3) Economic Hardship and Self-Imposed Hardship Not Grounds for Variance.** The hardship is not economic or self-imposed because . . . .

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**(4) Preservation of Property Rights.** That such variance is necessary for the preservation and enjoyment of substantial property rights . . .

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**(5) Absence of Detriment.** That the variance will not create substantial detriment to adjacent property . . . .

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**Attach a plat of survey of your site and a copy of detailed construction plans.**

**IF YOU QUALIFY FOR A VARIANCE**

- The Board may grant only the minimum variance necessary while preserving the purpose and intent of the zoning ordinances.
- The Board may impose conditions on project design, construction activities or operation of a facility to assure that public interests are protected.
- A variance granted by the Board of Appeals shall expire within six (6) months unless substantial work has commenced pursuant to such grant.
- 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 of Appeals 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.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**(Applicant/Agent/Owner)**

**Remit to: City of Elkhorn  
Zoning and Building Department  
311 Seymour Court  
Elkhorn, WI 53121**