

## **Primary Standards for a Zoning Variance – State of Wisconsin**

By the League of Wisconsin Municipalities

### **What are the primary standards for obtaining a zoning variance (State Statutes)?**

A city or village zoning board of appeals abuses its power if it routinely grants zoning variance requests. A zoning board may grant a zoning variance request only in limited circumstances and only when the applicant provides evidence that proves they have met all of the legal criteria for a requested variance.

There are three main criteria that a variance applicant must satisfy: unnecessary hardship, a unique property condition, and no harm to the public interest.

The Wisconsin Supreme Court recognizes two types of zoning variances that may be granted by a zoning board: area variances and use variances. *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis.2d 549, 676 N.W.2d 401. However, these terms are not defined by state law. Consequently, this is a critical area for local action to define the terms in the local zoning code because case law establishes separate unnecessary hardship tests for use and area variances.

A use variance applicant must show that they will have no reasonable use of the subject property without the requested variance. *Ziervogel*, 269 Wis.2d at para. 31. This is an extremely difficult burden to satisfy and rightly so. A use variance is effectively a rezoning of property to allow a land use that the governing body of a municipality already determined is incompatible with other uses in the zoning district and risks great changes in neighborhood character.

An area variance applicant must show 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.” *Snyder v. Waukesha County Bd. of Adjustment*, 74 Wis.2d 468, 247 N.W.2d 98 (1976). Thus, it is not enough that an area variance applicant show that a zoning regulation prevents or burdens their planned activity. They must show by competent evidence that the regulation unreasonably prevents or unnecessarily burdens the activity.

All zoning variance applicants must also show that the alleged unnecessary hardship is due to a unique property condition. *Snyder*, 74 Wis. 2d at 479. This phrase is not defined by statute but court decisions establish that it means a special physical feature of the property (soil conditions, steep slope, wetland, etc.) that is not shared by nearby land. *See Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis.2d 246, 258, 469 N.W.2d 831 (1991). More importantly, if a variance applicant fails to prove the existence of a unique property condition and a connection between the condition and the hardship, even if the hardship is great, a zoning board has no power to grant the requested variance.

Finally, all variance applicants must show that the requested variance will not be contrary to the public interest. *Arndorfer*, 162 Wis. 2d at 256. This criteria requires the zoning board to consider the purposes of the ordinance at issue and determine “whether the relief requested is consistent with the public interest such that the variance should be granted, or whether a variance would subvert the purpose of the zoning restriction to such an extent that it must be denied.” *Ziervogel*, 269 Wis.2d at para. 34.