

VARIANCES AND SPECIAL EXCEPTIONS



**Relief from Strict Adherence
to the Zoning Code**

MARQUETTE
—
COUNTY
—
WISCONSIN—

Marquette County
Planning & Zoning Department
77 W. Park Street, Room 104
Montello, WI 53949

Recognizing the fact that zoning ordinances cannot be written to address every circumstance, zoning ordinances must specify procedures for seeking relief from strict adherence to the zoning code. A zoning variance or special exception authorizes a landowner to establish or maintain a use that is prohibited in the zoning ordinance. Requests for variances or special exceptions are not always granted.

A variance is a relaxation of a standard in a land use ordinance. A special exception is any variation of a standard expressly listed in the zoning ordinance including land uses or dimensional changes.

Variances and special exceptions are decided by the zoning Board of Adjustment. The Board of Adjustment 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, court decisions and the local ordinance to a specific fact situation.

Quasi-judicial decisions involve the application of a set of rules or policies to a particular fact situation. These decisions involve the exercise of some discretion. For example, in deciding whether to grant a variance or special exception request, the board has the power to investigate facts, hold hearings, weigh evidence, draw conclusions, and use this information as a basis for their official decisions. Discretion of quasi-judicial decision-makers is strictly limited by local ordinance and related state laws. The board may only apply ordinances as they are written and may not substitute their judgment for that of the elected local governing body.

Variances are meant to be an infrequent remedy where an ordinance imposes a unique and substantial burden. Special exceptions are not suited to all locations in a zoning district. Special exceptions may be allowed in some locations if they meet specific conditions set out in the zoning ordinance and are not contradictory to the ordinance's intent.



Appeals Process

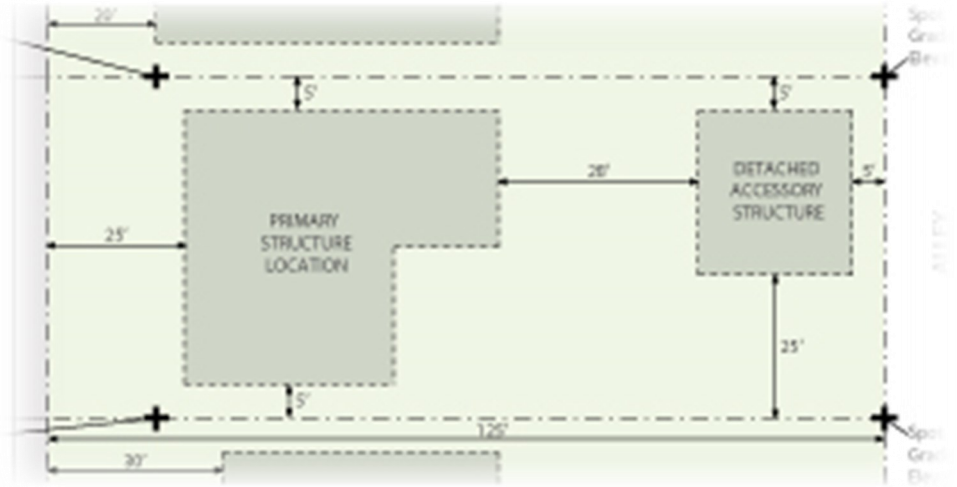
A variance or special exception decision may be appealed to circuit court by any aggrieved person, taxpayer, officer or body of the municipality within 30 days of filing of the decision in the Marquette County Zoning Office. For this reason, you may choose to delay your project until the appeal period has expired.

Permitting Process

Any permission for development granted by a decision of the Board of Adjustment must be authorized by obtaining the necessary building, zoning, and other permits. Permission to develop may be revoked for violation of any conditions imposed by the board. The applicant will be given notice of the violation and an opportunity to be heard.

**DETAILED PLANS MAY
INCLUDE SOME OR ALL OF THE
FOLLOWING:**

- Property lines
- Proposed vegetation removal
- Contour lines (2 ft. interval)
- Ordinary high-water mark (lake properties)
- 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



APPLICATION PROCESS

At the time of application, you will be asked to:

1. Complete an application form and submit a non-refundable fee.
2. Provide detailed plans describing your lot and project (location, dimensions and materials).
3. Provide a written statement of verifiable facts showing that your project meets the legal criteria for a variance or special exception.
4. Contact your Town Board to inform them of your request. The municipality may ask you to attend a Town Board meeting to discuss the application.

Following the receipt of a completed application, the zoning department will publish notice of your request for a variance or special exception in the county'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. You or your agent must convince the zoning board to make a ruling in your favor. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and then must deny your application. The board must make its decision based only on the evidence submitted to it at the time of the hearing.



Special Exceptions



Requested Uses:

- ◆ Replacement of a Legal Non-conforming Manufactured Home
- ◆ Home Based Business
- ◆ Campgrounds
- ◆ Kennels
- ◆ Mini Warehouses
- ◆ Hotels, Motels or Bed and Breakfast Establishments
- ◆ Multifamily Dwelling or Condominiums
- ◆ Migrant Housing
- ◆ Shooting Ranges
- ◆ Golf Courses
- ◆ Churches and their Affiliated Uses
- ◆ Professional Offices
- ◆ Public Recreational and Community Center Buildings and Grounds
- ◆ Libraries and Schools
- ◆ Hospital and Medical Institutions
- ◆ Funeral Homes
- ◆ Mobile Home Parks
- ◆ Private clubs, Lodges and Resorts
- ◆ Governmental Uses
- ◆ Microbrewery
- ◆ Light Manufacturing
- ◆ Warehouses
- ◆ Body Repair Shop
- ◆ Grain Elevator
- ◆ Airports/Airfields
- ◆ Salvage Yards
- ◆ Power Plants
- ◆ Sawmill
- ◆ Quarrying
- ◆ Adult Establishments
- ◆ Commercial Greenhouses
- ◆ Marinas and Boat Liveries
- ◆ Commercial Entertainment Facilities
- ◆ Educational and Recreational Camps
- ◆ Farm Implement Dealer

In short, special exceptions must be custom tailored to a specific location. A special exception must be listed as such in the zoning ordinance, along with the standards and conditions which it must meet.

Performance and design standards

The Board of Adjustment may impose additional conditions on development consistent with standards for approval and ordinance objectives. The board may require an applicant to develop a project plan to accomplish specified performance standards (e.g., meet with land conservation department staff to develop an erosion control plan that contains all sediment on the site).

Continuance of use

Once a special exception is granted, subsequent owners of a property are entitled to continue the use subject to the limitations imposed in the original permit. This is so because site conditions and potential conflicts with neighboring land uses, rather than the circumstances of the applicant, determine whether a special exception can be permitted at a particular location.

Time limits

Special exceptions may be granted for a limited term if the board can provide a legally defensible reason for the time limit. Periodic permit renewal to monitor compliance with development conditions is common and acceptable. It is often required by ordinance for specified types of uses (e.g., quarry and mineral extraction operations).

Permit violations

If an owner changes the use or violates permit conditions, the board may revoke a special exception permit or modify conditions after notice and a hearing. These conditions generally relate to site suitability and compatibility with neighboring land uses due to noise, odor, traffic, and other factors.



Variances

Additional Guiding Principles

Few areas of land use law are as extensively litigated as the standards necessary to qualify for a variance. The rich case law concerning variances provides these additional guiding principles that a board relies on in their decision-making.

Parcel-as-a-Whole: The entire parcel, not just a portion of the parcel, must be considered when applying the unnecessary hardship test.

Self-imposed Hardship: An applicant may not claim hardship because of conditions which are self-imposed. Examples include excavating a pond on a vacant lot and then arguing that there is no suitable location for a home; claiming hardship for a substandard lot after selling off portions that would have allowed building in compliance; and claiming hardship after starting construction without required permits or during a pending appeal.

Circumstances of Applicant: Circumstances of an applicant such as a growing family or desire for a larger garage are not a factor in deciding variances.

Financial Hardship: Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property.

Nearby Violations: Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.

Objections from Neighbors: A lack of objections from neighbors does not provide a basis for granting a variance.

Unlike a permitted use or special exception which allow a property to be used in a way expressly listed in the ordinance, a variance allows a property to be used in a manner forbidden by the zoning ordinance. Area variances provide an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback. The board may grant only the minimum variance needed.

A variance grants only the specific relief requested (as described in the application and plans for the project) and as modified by any conditions imposed by the board. The variance applies only for the current project and not for any subsequent construction on the lot. As an example, if the landowner has received a variance to build the garage and want to also build a screen porch, they may only build the screen porch if they receive an additional variance specifically for the screen porch.

Variations do not create nonconforming structures. If a variance is granted to build or expand a structure, it does not give that structure nonconforming structure status. This relates to the previous point that variances only provide specific relief. A variance transfers with the property. Because a property, rather than its owner, must qualify for a variance to be granted, a variance transfers with the property to subsequent owners. Multiple variances for a single project may be granted. In some cases, a single project may require more than one variance to provide reasonable use of a property.

What are the criteria for granting a variance? Taking into consideration public interests, the board must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state. Application review and hearings focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

To qualify for a variance, an applicant has the burden of proof to demonstrate that all three of the following criteria are met:

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.” Courts state that “unnecessarily burdensome” may be interpreted in different ways depending on the purposes of the zoning law from which the variance is being sought. For example, the purpose of a shoreland district to protect water quality, fish, and wildlife habitat and natural scenic beauty for all navigable waters in Wisconsin would be interpreted differently from the purpose of a residential district to protect the character of established residential neighborhoods.

Unique Property Limitations

Unnecessary hardship must be due to unique physical limitations of the property, such as parcel dimensions, steep slopes or wetlands that prevent compliance with the ordinance. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances.

No Harm to Public Interests

A variance may not be granted which results in harm to public interests. In applying this test, the board reviews the intent of the ordinance and related statutes in order to identify public interests. These may include:

- ◆ Promoting and maintaining public health, safety, and welfare
- ◆ Protecting water quality
- ◆ Protecting fish and wildlife habitat
- ◆ Maintaining natural scenic beauty
- ◆ Minimizing property damages
- ◆ Ensuring efficient public facilities and utilities
- ◆ Requiring eventual compliance for nonconforming uses, structures, and lots

Additional Resources

Board of Adjustment Meeting Dates: Last Thursday of the Month, 1:00pm

Meeting dates are subject to change due to holidays or other situations. Always check with the Zoning Department to confirm hearing dates for an application. Applications are accepted through the end of a month with a scheduled hearing to be held the following month. When only one application is received during a month, a hearing will be postponed for one additional month.

Board of Adjustment Members:

Mary Walters, Chair (term expires 06/2027)
Lance Achterberg (term expires 06/2027)
David Benson (term expires 06/2029)
Adam Malsack, 1st Alternate (term expires 06/2027)
Heidi Robinson, 2nd Alternate (term expires 06/2029)



Marquette County Website Resources:

[**Marquette County Home Page**](#)

[**Planning & Zoning Department Webpage**](#)

[**County Directory**](#)