

Fee \$175  
Receipt No \_\_\_\_\_



**VILLAGE OF LITTLE CHUTE**

**APPLICATION FOR REQUEST OF VARIANCE OF THE ZONING CODE**

PROPERTY APPEAL SITE ADDRESS \_\_\_\_\_

APPLICANT \_\_\_\_\_

ADDRESS/ZIP \_\_\_\_\_ TELEPHONE \_\_\_\_\_

CITY/ZIP \_\_\_\_\_ FAX \_\_\_\_\_

Email address \_\_\_\_\_

Appellant named above, files herewith this application of variance of the zoning code.

Description of variance requested, include specific provisions of ordinance involved:

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Please respond to the following questions (Attach additional sheets as needed):

1. Describe why you feel there is “unnecessary hardship”, which is defined as complying with the petitioned ordinance standard would unreasonably prevent you from using the property for a permitted use or would render conformity with such restrictions unnecessarily burdensome.

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2. Describe what unique property limitations exist that prevent ordinance compliance and are not common to adjacent properties

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3. Describe how you consider the hardship under both items above is not self-created

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4. Describe how you feel the granting of this variance would not harm public interests as you consider the general purpose of the ordinance and the specific provision being petitioned.

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**Attach any and all documentation to this application which applicant wishes to be reviewed at hearing.**

**Scale drawings of proposed and existing structures showing all heights and setbacks from property lines as well as percentage of lot coverage MUST be included with application for variance.**

Applicant or their representative should attend hearing to answer questions of the review board or commission.

Appellant herewith requests to fix a time for public hearing within as short a reasonable time as possible to give proper notice of such hearing as well as due notice to parties of interest.

**I CERTIFY THAT THIS APPLICATION AND ANY ATTACHMENTS ARE, TO THE BEST OF MY KNOWLEDGE, COMPLETE IN ACCORDANCE WITH ALL APPLICABLE CODES.**

APPLICANT SIGNATURE \_\_\_\_\_

DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

**APPLICATION FEE of \$175.00 must accompany application at time of submittal.**

Following to be Filled out by Community Development Department:

Date received and Village person receiving application \_\_\_\_\_

Date of Hearing: \_\_\_\_\_

Decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sec. 44-518****Applications for Hearings.**

- (a) **Time of Appeal.** Appeals shall be filed within thirty (30) days after the date of receipt of the written decision or order from which the appeal is taken by filing in duplicate a notice of appeal with the Village Clerk. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
- (b) **Who May Appeal.** Appeals or applications to the Board may be made by:
- (1) The owner, mortgagee, purchaser under a land contract, optionee or occupant under a written lease for one (1) year or more of the property for which relief is sought.
  - (2) Any officer (other than the Zoning Administrator), department, board or bureau affected by a decision or order of the Zoning Administrator.
  - (3) Any person aggrieved and whose use and enjoyment of property within the Village is directly and adversely affected by a decision or order of the Building Inspector, Zoning Administrator or the requested Board action.
- (c) **Appeal and Application Forms.** Every appeal or application shall be made upon forms furnished by the Village Clerk which have been approved by the Board of Appeals. **A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested.** The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chairperson or Secretary of the Board of Appeals which is necessary to inform the Board of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application.
- (d) **Filing Appeal or Application.** The appellant or applicant shall file the required appeal form in duplicate with the Village Clerk. The Village Clerk shall deliver one (1) copy to the Zoning Administrator or other officer or body from whose decision an appeal is taken. Upon receipt of an appeal, the Zoning Administrator or other officer or body responsible for the original determination shall transmit to the Secretary of the Board of Appeals all notes or papers relating to the order or decision from which the appeal is being taken.
- (e) **Election to Have Appeal or Application Handled as a Contested Case.** The applicant or appellant may elect to have the appeal or application handled as a contested case. The appeal or application form shall explain that a contested case includes the right of all parties to cross-examine witnesses, to object to improper evidence and to have a record of the proceedings made by a court reporter or qualified stenographer or by tape recording. Election to have the matter treated as a contested case must be made in writing at the time of filing of the appeal or application.
- (f) **Fee.** All appeals and applications filed with the Village Clerk shall be accompanied by payment of a required fee of One Hundred Seventy-five Dollars (\$175.00). If the appellant or an applicant elects the contested-case method, he or she shall also pay the amount determined by the Board of Appeals to cover the additional administrative costs involved.
- (g) **Insufficient Notice.** No appeal or application shall be considered by the Board of Appeals unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the Village Clerk shall supply the applicant with the proper forms which must be filed within ten (10) days, in addition to the thirty (30) days specified in Subsection (a), in order to be considered by the Board of Appeals.

**Sec. 44-521****Variances.**

- (a) **Purpose; Plan Commission Review.**
- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
  - (2) Persons requesting a variance shall first submit such request to the Plan Commission, who shall make a determination on the request following notice and hearing. Persons denied a variance by the Plan Commission may appeal such denial to the Village Board, who shall make a determination on the request following notice and hearing. Persons having a variance request denied by both the Plan Commission and Village Board may then have their request reviewed by the Board of Appeals pursuant to this Section.
  - (3) The Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.
  - (4) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.
- (b) **Application for Variances.** The application for a variance shall be filed pursuant to Section 44-518.
- (c) **Public Hearing of Application.** The public hearing for a variance shall be conducted pursuant to Section 44-519.
- (d) **Prohibited Variances.** The Board of Appeals shall not grant use variances in floodplain or wetland and conservancy districts. In all other districts, no use variance shall be granted unless the applicant has first petitioned for a zoning amendment or a conditional use permit, if applicable, and upon a showing that no lawful and feasible use of the subject property can be made in the absence of such variance. Any use variance granted shall be limited to the specific use described in the Board's decision and shall not permit variances in yard, area or other requirements of the district in which located.
- (e) **Action of the Board of Appeals; Standards.** For the Board of Appeals, it must find that:
- (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
  - (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.
  - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
  - (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.
  - (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code, specifically the standards of Sec. 44-119.

- (f) **Conditions.** The Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.

## Guiding Principles to Grant a Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

**Parcel-as-a-whole.** The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County*, 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

**Self-imposed hardship.** An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

**Circumstances of applicant.** Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

**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 or be the least expensive option for the applicant. *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

**Uniqueness of the property.** Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the BOA may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption. *Arndorfer v. Sauk County Bd. Of Adjustment*, 162 Wis. 2d 246, 469 N.W.2d 831 (1991).

**Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

**Previous variance requests.** Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

**Objections from neighbors.** The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

**Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)