

Town of Lac du Flambeau

AREA ZONING VARIANCE APPLICATION FORM AND NOTICE OF REQUIREMENTS

RETHINK YOUR PROJECT

Explore options for redesigning your project so that it complies with zoning regulations. Relocate a structure to meet setback requirements. Redesign the footprint of the structure to fit the shape, size and topography of the lot. If alternatives are not feasible, use the three-step criteria in order to apply for a variance.

I have explored alternative designs for my project and I understand that my property must qualify under all three criteria described in order for a variance to be granted.

Applicant's Signature _____ Date _____

VARIANCES

A variance is a relaxation of a standard in an ordinance. Variances are decided by the 5-member Board of Appeals, which is appointed by the Lac du Flambeau Town Board. The Board of Appeals is known as a quasi-judicial body because it functions in many ways of a court. The Board's decisions must comply with specific criteria provided in state law. The Board must apply Town ordinance provisions as they are written. Its 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 the ordinance imposes a unique and substantial burden. The burden of proof is on the person requesting the variance. There are three specific issues that the petitioner must address and prove pertaining to the type of variance requested.

IF YOUR PROJECT QUALIFIES FOR A VARIANCE

1. The Board of Appeals may grant only the minimum variance.
2. It may impose conditions on project design, construction activities or operation of a facility as mitigation measures to assure that public interests and neighboring properties are protected.
3. A variance decision may be appealed to circuit court by an aggrieved party within 30 days of the date the Board's decision is rendered.
4. Because a property, rather than its owner may qualify for a variance, a variance transfers to subsequent property owners.

AREA VARIANCES

Provides an increment of relief (normally small) from a PHYSICAL DIMENSIONAL RESTRICTION such as frontage, setback, height, bulk or density. The applicant has the burden of proof to show that all three statutory tests are met.

The three-step test for an Area Variance is:

1. **Unnecessary Hardship** - Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would render conformity with such restrictions unnecessarily burdensome. The hardship must be unique to the property and not self-created.

2. **Unique Physical Limitations of the Property** - Must show that compliance with the terms of the ordinance is prevented by unique physical limitations of the property (steep slopes, wetlands etc.) which are not generally shared by other properties. Personal circumstances such as a growing family, or need for a larger garage are not a factor in deciding variances. Nearby ordinance violations and prior variances do not provide a basis for granting a variance.

3. **No Harm to Public Interest** - A variance may not be granted which results in harm to public interests. The Board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests include:

- Public health, safety and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provision of efficient public facilities and utilities
- Gaining compliance for nonconforming uses

ATTACHMENTS AND INSTRUCTIONS

1. Complete an application form and submit \$250.00 fee.
2. Provide a survey of your lot showing all improvements to date.
3. Provide a written statement showing that your project meets the legal criteria for a variance (Three Step Test).
4. Stake out lot corners or lines, the proposed building footprint and all other features of your property related to your request so that the Board may inspect the site.
5. Provide 6 copies of site plans drawn to a scale of either 10, 20, 30, 40 or 50 feet to 1 inch. Site plans shall include the overall dimensions of any existing structure(s), proposed structures and/or proposed additions. Dimensions shall include roof overhangs and/or projections. Location of well and septic system, including alternate area, shall be indicated.
6. Attach driving directions from the Town Hall to your property.

At least 15 days prior to the public hearing, applicant must notify, by Certified Mail, Domestic Return, Return Receipt Requested.

1. All property owners within 300 feet of the property lines of the property.
2. Tribal Council, c/o Tribal Chairman
P.O. Box 67
Lac du Flambeau, WI 54538

After a review of the completed application by the Zoning Administrator and Board of Appeals Chairman, the Board of Appeals will publish notice of your request for a variance in the Town's designated newspaper, noting the location, time and reason for the required public hearing. The burden is on the property owner to provide verifiable facts upon which the Board will base its decision. At the hearing, any party may appear in person or be represented by an agent or attorney. If any of these requirements are not met, or if the property owner or agent or attorney does not appear at the public hearing, the Board must deny your request for a variance and your fee will be forfeited.

LAC DU FLAMBEAU BOARD OF APPEALS

PETITION FOR AREA VARIANCE (A Variance regarding regulations on frontage, setback, height and density requirements of the zoning ordinance).

DATE FILED _____
\$250.00 non-refundable fee, payable to Town of Lac du Flambeau

Check # _____

APPLICANT/AGENT OWNER CONTRACTOR

NAME _____

MAILING ADDRESS _____

PHONE _____

Tax Parcel # _____

Computer # _____

Property Address _____

Legal Description ___ 1/4 ___ 1/4, Section ___ Town ___ Range ___

Lot Area and Dimension _____ sq. ft., _____ X _____ ft.

Zoning District _____

CURRENT USE AND FOR HOW LONG HAS PROPERTY BEEN SO USED

PROPOSED USE

TERMS OF ORDINANCE VARIANCE REQUESTED FOR

THE APPLICANT MUST: Address each of the following criteria for granting a variance as described on the preceding pages. Carefully write out in detail complete explanations as to why you believe this project meets each of the three requirements and attach your explanation to this application (attach additional pages as necessary).

1. UNNECESSARY HARDSHIP (Cannot be self-created)

2. UNIQUE FEATURES OF THE PROPERTY

3. NO HARM TO PUBLIC INTEREST

I hereby certify that the information I have provided in this application and the land survey are true and accurate.

Signed: _____

Applicant/Agent/Owner

Date: _____

Remit to: Town of Lac du Flambeau
Zoning Administrator
P.O. Box 68
Lac du Flambeau, WI 54538

JUDICIAL REVIEW

Following are the general review standards which courts have used to decide appeals of Board of Appeals decisions. You might consider these points to determine whether any decision in which you have an interest is likely to be reversed on appeal.

1. Did the Board decide a matter which it is empowered by statute or ordinance to act upon (subject matter jurisdiction)?
2. Did the Board follow proper procedures (e.g. notice, hearing, reviewable record, open meeting law, etc.)?
3. Did the Board apply the proper standards in making the decision (e.g. 3-step test for a variance)?
4. Was there a rational basis for the decision (could a reasonable person have reached this conclusion)?
5. Is there evidence in the record (facts) to support the decision?

**DECISION OF THE LAC DU FLAMBEAU
BOARD OF APPEALS**

AREA VARIANCE REQUEST

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board finds the following facts:

Filing Date: _____

Notice Dates: _____

Hearing Date: _____

1. The applicant(s) is/are: (name and address) _____

2. The applicant(s) is/are the owner of the following described property which is the subject of the variance: _____

3. The property is presently in use for _____ (current use) and has been so used continuously since _____ (date).

4. The applicant(s) proposes(s) brief project description/attach plans:

5. The applicant(s) request(s) a variance under Article 18, Section 18.5 of the Ordinance (attached).

6. The features of the proposed construction and property which relate to the grant or denial of the variance are (refer to the standards or criteria in the Ordinance): Article 18.5.E.

7. The applicant(s) claim(s) that there is an unnecessary hardship as follows:

8. The applicant(s) claim(s) that the property has unique physical limitations as follows:

9. The applicant(s) claim(s) that the variance will not be contrary to the public interest as follows:

CONCLUSIONS OF LAW

Based on the findings of fact the Board concludes that:

A. Unnecessary hardship is/is not present in that a literal enforcement of the terms of the zoning Ordinance would/would not unreasonably prevent the owner from using the property for a permitted purpose or alternatively would render conformity with such restrictions unnecessarily burdensome because:

B. The hardship is/is not due to physical limitations of the property rather than the circumstances of the appellant because:

C. The variance will/will not be contrary to the public interest as expressed by the objectives of the Ordinance because:

ORDER AND DETERMINATION

On the basis of the findings of fact, conclusions of law and the record in this matter the Board orders:

VARIANCE: The requested variance is denied/granted in part subject to the following conditions:

1. _____

2. _____

3. _____

4. _____

The zoning administrator is directed to:

- a) Issue a zoning permit incorporating these conditions; or
- b) commence an action to enforce the terms of the Ordinance if the violation is not corrected by: _____

Any privilege granted by this decision must be exercised within one (1) year of the date of this decision by obtaining the necessary building/zoning and other permits; i.e., county and state for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

This order may be revoked by the Board after notice to the applicant(s) and an opportunity to be heard on the matter if any of the conditions imposed are violated.

NOTICE OF RIGHT TO APPEAL - A decision made by the Board of Appeals regarding a variance may be appealed by filing an action in certiorari in the circuit court for this township within 30 days after the date of filing the decision. The Town of Lac du Flambeau assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to the expiration of this 30 day period.

BOARD OF APPEALS

Signed _____

Chairperson

Attest _____

Secretary

Dated _____

Filed _____

