

CHAPTER 70

VARIANCES

SECTION 1: All reasonable effort will be made by the Comprehensive Plan Commission to hold a hearing within thirty (30) days of application. The Comprehensive Plan Commission will Then forward recommendations to the Town Board.

SECTION 2: The following procedure will be followed for variances. Fees for publishing, mailings, mileage and time for special meetings will be at the expense of the requester.

A. When an identified chapter allows for a variance procedure, the requester shall file for a variance with the Town Clerk in writing.

B. The Town Clerk shall make a reasonable attempt to notify all adjoining property owners of variance request in writing, by certified mail.

C. The Town Clerk shall notify the Comprehensive Plan Commission, set a date and give public notice. The Comprehensive Plan Commission shall hold a hearing and make recommendation to the Board.

D. Fill out and submit Variance Application form (see following page).

Variance Application

Pursuant to Auburn Township Variance Ordinance, Chapter 70 Sec 2 D

<u>FEE</u>	-----For Town Use Only-----
<input type="checkbox"/> Variance \$300/SpecMtg <i>Make check payable to "Town of Auburn Treasurer"</i> <i>We do not issue refunds</i>	Parcel # _____ File ID # _____
An appeal to Section _____ of the Town of Auburn _____ Ordinance An appeal to Section _____ of the Town of Auburn _____ Ordinance An appeal to Section _____ of the Town of Auburn _____ Ordinance Town Board Official: _____	
Along with this application, a site plan must be submitted. Please see reverse side for plan requirements. Please note that all applications must be filed by the established deadline. An application <i>will not</i> be considered filed if it is incomplete, illegible, or the fee is not paid.	

Please provide a short narrative for each box:

1. Current Use of Property:	
What is land currently used for?	
% Vacant	% Single Family Residence
% Active Farm	% Business/Industrial/Commercial
<i>Please describe:</i>	
Have any prior variances been granted or denied for this property?	% Yes % No
Are there any nonconforming structures on this property?	% Yes % No
<i>If yes, please describe:</i>	
2. Proposal Information:	
Explain your proposed plans and why you are requesting a Variance: <i>(Submit attachments where necessary)</i>	
% Same	% Other <i>(Describe Below)</i>
Will denial of the variance prevent you from using this property for a permitted use or render conformity with the Code unnecessarily burdensome? Why?	
% Yes % No	
Describe the exceptional or extraordinary circumstances or conditions that apply to your lot or structure that do not apply to the surrounding lots or structures:	
Describe how the Variance would not have adverse affects on surrounding properties:	

I certify that the above information is true, accurate and complete.

Property Owner Signature _____ Date _____

Print Name _____

Please note that in order for the Board of the Town of Auburn to make the proper determination, it is critical that the information you submit be complete, accurate, and easily understood. Please keep in mind the following:

1. Your site & building plans are the most important documents in your file. Follow the directions provided to make them as accurate and complete as possible.
 2. You are encouraged to submit other documents or supporting information that tend to show how your application meets the legal criteria (*below*) for a variance. The Planning Commission may request additional information where needed. Documented information is preferred over verbal testimony.
 3. Building locations and lot lines, if applicable, must be staked or otherwise clearly marked at the site for the Board/ Plan Commission inspection of the property.
 4. **You must be present at the public hearing or be represented by someone** capable of responding to questions from the Board about site conditions or construction plans.
 5. Your failure to appear at the public hearing or to provide adequate information may result in the application being tabled.
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Legal Standards for Variances

As a potential applicant for a variance, you need to be aware of the legal standards under which variance applications are to be evaluated by the Board of Auburn Township. Wisconsin courts have stated that variances are not to be granted routinely. To do so would defeat the purpose of having a variance ordinance. The courts have also stated that it is the burden of the applicant to show that their application meets the required standards.

The Planning Commission have been directed to submit to the Board of Auburn Township an evaluation of all variance requests under the legal standards established by the courts. In order to justify the granting of a variance, the applicant must show that *an unnecessary hardship* exists, that there is a *unique property limitation*, and that *the variance would not be contrary to public interest*.

The following points are all drawn from Wisconsin case law, and are the standards under which a variance action would be reviewed by the courts:

1. **Unnecessary Hardship:** What constitutes a hardship is to be determined from the facts and circumstances of each individual case. The Board must consider the following court-established principles:
 - Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome. In most cases, if a property already is developed and has an established use, a hardship will not exist.
 - The hardship must be peculiar to the parcel in question and different from other parcels, not one which affects all parcels similarly.
 - Loss of profit or financial hardship is not in and of itself grounds for a variance. The fact that developing in compliance with ordinance requirements may cost considerably more does not constitute a hardship.
 - Self-imposed hardship is not grounds for a variance. When conditions giving rise to the need for a variance were created by the property owner or a former owner, the hardship is self-imposed.
2. **Unique Property Limitation:** Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the variance ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of the property.
3. **Protection of the Public Interest:** Granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public welfare will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only the *minimum relief* necessary to allow reasonable use of property.

Several recent Wisconsin cases (neither of which originated in the Town of Auburn) clearly illustrate some of the above principles. They are described in brief here only because they have similarities to many of the variance requests that a county might typically receive, and to illustrate the extent to which the courts intended variances to be the exception, not the rule:

- In one case, a property owner sought to add a deck to a lake home. The house met the 75 foot setback requirement; the proposed deck would have resulted in a setback of 64 feet from the ordinary high water mark. The house had been on the property for 60 years, and there was a slope extending from the house to the water's edge. The Board of Adjustment approved the variance, finding that, among other things, the request was "modest", that there were many other properties closer to the lake than the applicant, and due to the slope, the deck provided greater safety. The Wisconsin Supreme Court overturned the decision, finding that because reasonable use had been made of the property for 60 years without the deck, no hardship could be said to exist.
- In another, a property owner was granted a variance to build a house that was large than the available building envelope on the property. The Wisconsin Supreme Court overturned the variance, stating that the owner had failed to demonstrate that no other house plan could be accommodated on the property within the setback limitations.

It is essential for you to understand these legal standards and that it is your obligation to demonstrate that your application meets these standards. A variance is not to be granted as a convenience to the property owner. If an evaluation of your application by the Planning Commission of Auburn Township finds that the legal standards are not met, their report may include a recommendation for denial of the variance. While the Board of Auburn Township is not to be bound by the information and recommendations in the Plan Commission report, it still has an obligation to follow the standards listed here in reaching its decisions.

It is strongly recommended that you provide your plans to the Planning Commission of Auburn Township well in advance of filing an application for a variance to allow for a preliminary review and determination as to whether the legal standards are met. If, after reviewing this information, you believe that you can meet these standards and wish to pursue an application for a variance, contact the Clerk or look on our website under Ordinances Chapter 70 or under the "Forms and Permits" link for application materials.

Acknowledgment

I have read and understand the above information relating to the legal standards applicable to my variance application.

Applicant Signature _____ Date _____

Print Name _____

It is required that this sheet be signed, dated, and attached to a variance application before the application will be deemed complete and placed on the agenda for a public hearing. Please note that these standards are applicable only to variances, not to conditional uses or appeals of administrative actions.

Site Plan Guidelines

An accurate diagram showing the relationship of your buildings and proposed construction to lot lines, shorelines, highways, structures on adjacent properties, and the essential information the Planning Commission needs in order to reach a decision is required. It is not required that you submit professional quality plans, but if you cannot accurately and clearly illustrate your proposal, it is recommended that you obtain assistance in preparing your site plan.

- Please use a ruler while creating your site plan, as freehand drawings are often of questionable accuracy and can distort the relationship between various physical features on the property.
- Do not use estimations; accurately measure and illustrate all the critical measurements on your site plan.
- It may be helpful to sketch your proposal directly onto a copy of a survey, if one is available.
- The correct setback measurement is the shortest straight line between the building and the line being measured to.
- Supplemental drawings may be helpful depending on site conditions. (Example: Cross Section)
- Setback information on adjacent properties, including wells and septic systems, should be provided.

The checklist below provides information on the requirements needed for permit submittal, including all requirements of the site plan. Please use this checklist when drafting your plan. Some examples of site plans for various kinds of variance requests have been included. They are not intended as examples of proposals that are entitled to approval, but they clearly and accurately illustrate the nature of the request, and provide all the necessary measurements. Some plans will be simple; others more complicated. Clarity and accuracy is the intended result. Please have plans ready for submittal at the time of application or as early as possible prior to the hearing, so that our staff can review them and address deficiencies early enough for you to correct them.

REQUIREMENTS FOR PERMIT SUBMITTAL			
Owner's Check List	ITEMS NEEDED	Staff Check List	Info Needed
	Completed General Information Application Cover Sheet		
	Completed Variance Application		
	Review Fee (Section 9-1-12)		
	Other Approvals and Permits <i>(if applicable)</i> :		
	REQUIREMENTS FOR OVERHEAD SITE PLAN		
	Drawn to Scale		
	Date of Preparation		
	Land Owner's Name		
	North Arrow		
	Lot Lines and Dimensions		
	Adjacent Public Roads and Rights-of-Way		
	Any Required Visual Clearance Triangles		
	Existing and Proposed Structures and their Dimensions		
	Location of All Drives and Entrances		
	Distances Between Structures and Lot Lines		
	Distances Between Structures and Other Structures		
	Distances Between Structures and the Centerlines of Abutting Roads and Highways		
	Distances Between Structures and the Road Right-of-Way		
	Distances Between Structures and the Ordinary High Water Mark of Nearby Bodies of Water		
	Distances Between Structures and Nearby Wetlands		
	Location of Existing/Proposed Sewage Disposal System <i>(include both tank and drain field locations)</i> with Distances to Proposed Building/Addition		
	Location of Existing/Proposed Well with Distances to Proposed Building/Addition		
	Setback information of adjacent properties <i>(include wells and septic systems)</i>		
	Landscaping Plan <i>(if required)</i>		
	Grading and Drainage Plan <i>(if required)</i>		

*Refer to Building Ordinance Chapter 42 for setback requirements.