

ZONING BOARD OF APPEALS

Matters to be heard are applications for variance from terms of the City of Watertown Zoning Ordinance. A variance may be granted if all of the following conditions are met:

1. Unnecessary hardship is present in that a literal enforcement of the terms of the terms of the Zoning Ordinance would deny the applicant all reasonable use of the property.
 - a) That unnecessary hardship will result from strict application of an ordinance requirement. Wisconsin case law describes hardship as being present where, in the absence of a variance, no reasonable use can be made of the property [see *Snyder v. Waukesha County Zoning Board*, 74 Wis. 2d 468 (1976)]. The reasonable use test relates to the whole property and there is no presumption that every part of a parcel must provide some economic use for its owner. An applicant may not claim hardship because of conditions which are self-imposed (for example, splitting a lot to create two substandard lots and then claiming hardship). Courts have also found that loss of profit or financial hardship do not, by themselves, justify a variance. An applicant for a variance has a duty to investigate alternative project designs and other uses of a property which would comply with the ordinance and avoid the need for a variance.
2. The hardship is due to physical limitations of the property rather than circumstances created by the applicant.
 - a) That unique physical limitations of the property cause the hardship. This test requires that compliance with ordinance standards is prevented by limitations of the property (steep slopes, wetlands, etc.). The circumstances of an applicant (growing family, desire for more vehicle storage, etc.) should not be a factor in deciding variances. Nearby ordinance violations and prior variances do not justify granting a variance.

If minor property limitations which prevent ordinance compliance are common to a number of properties, the problem may be addressed by amendment of the ordinance. For example, an ordinance might be revised to allow a 70-foot shore setback for all lots in subdivision "X" which were created before adoption of the ordinance and where required roadway setbacks make compliance with the shore setback impossible. This may be a reasonable approach provided all other ordinance requirements could be met.
3. The variance will not be contrary to the public interest, as expressed by the purpose and intent of the Zoning Ordinance.
 - a) That no harm to public interests will result from granting the variance. In applying this test, the board must consider the public interest factors listed as objectives in the purpose statement of the ordinance.