

**VILLAGE OF PARK RIDGE
ZONING BOARD OF APPEALS
24 Crestwood Drive
Thursday, July 15, 2021
5:30 PM at the Village Hall**

1. Convene in open session
2. Approval of agenda
3. Hear appeal from James Jernberg of Fiternal Fitness regarding a variance to approve a storage unit 10 feet from the lot line on the southeast corner of 19 Park Ridge Drive in Park Ridge.
4. Discussion and decision on above variance request
5. Adjourn

One-half or more of the members of the Village Board of Trustees may be present at this hearing for information gathering purposes.

Requests from persons with disabilities who need assistance to participate in this meeting and requests for further information about this variance request should be made to the Clerk's Office at 715-343-1590.

Posted: Monday, July 12, 2021

Public Notice was published in the Portage County Gazette on 7/2/21 and 7/9/2021

Fiternal Fitness
19 Park Ridge Drive
Stevens Point, WI 54481

RE: REQUEST FOR ZONING VARIANCE FOR STORAGE UNIT BEHIND FITERNAL FITNESS

PROCEDURE FOR PUBLIC HEARING BEFORE THE ZONING BOARD OF APPEALS COMMITTEE:

1. Submit a written request for a public hearing.
2. Submit plans.
3. Submit written consent of all neighbors bordering the property.
4. Submit check in the amount of \$100.00 made payable to the Village of Park Ridge.

Mail the above information to Village of Park Ridge, 24 Crestwood Dr., Stevens Point, WI 54481.

Upon receipt of items 1 through 3 listed above:

1. The Clerk will notify the Village Park Ridge Board of Appeals Chairperson to schedule the public hearing.
2. Clerk will send publication to the Portage County Gazette to be published 15 days before the public hearing. The notice will be published as a Class 2 publication, meaning it will appear as two separate publications a week apart. The last publication is approximately a week before the public hearing of the Zoning Board of Appeals
3. Zoning Board of Appeals Committee holds public hearing. Your attendance is requested.
4. Zoning Board of Appeals Committee will make the final decision. It can be a positive, neutral or negative recommendation.
5. Upon approval by the Zoning Board of Appeals Committee, the Building Inspector will be notified that the variance has been granted and the building permit can be issued.

PLEASE SUBMIT TO THE VILLAGE CLERK

To: Village of Park Ridge Zoning Board of Appeals Committee
24 Crestwood Dr.
Stevens Point, WI 54481

From: James Jernberg
Fiternal Fitness
19 Park Ridge Dr.
Stevens Point, WI 54481

RE: Written Request for Public Hearing

Dear Zoning Board of Appeals,

I am writing this letter to request a zoning variance for **Fiternal (Health) Fitness** located at **19 Park Ridge Drive**, in the Village of Park Ridge.

I am requesting that this application be considered before the Zoning Board of Appeals Committee.

Please find all required documents attached.

Fw: Fiternal fitness**From:** Jim Sachs <nyynduw3@outlook.com>**Sent:** Thu, Jun 24, 2021 at 2:57 pm**To:** Kathy Bemowski, Char Woyak

See below for an email received from a fitness center neighbor.

Jim

Call or text me at 715-341-0343

Sent From JimmyBaseball's Mac Book Air

'IF THE WORLD WERE PERFECT, IT WOULDN'T BE' - Yogi Berra

From: jcanderson@charter.net <jcanderson@charter.net>

Sent: Monday, June 21, 2021 3:34 PM

To: 'nyynduw3@outlook.com' <nyynduw3@outlook.com>

Subject: Fiternal fitness

Good afternoon, The owner of Fiternal stopped by my house told me he needs the neighbors to ok his planned expansion of building to create a sound barrier. have no objection. Thank You, Joel O. Anderson 108 Pincrest av.

Fiternal Expansion

From: F Pacocha <fwoytasik@gmail.com>

Sent: Thu, Jun 24, 2021 at 10:12 am

To: clerk@park-ridge.us

Good morning Char :) sorry about the name mix up in last email.

Could you please forward to Steve Menzel?

I just want to clarify that we are in favor of the expansion at the fitness place, if his plans do in fact include soundproofing the walls facing our home.

That is our only concern.

Thank you!

Faith and Mark Pacocha

121 Sunset Avenue

715-347-7019

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"Nothing is impractical, impossible, or out of reach. Your thoughts create worlds, your words shape the future, and the steps you take unleash the magic behind creation..."

RE: Fiternal Health & Fitness

From: Crow Family Dental <crowfamilydental@live.com>

Sent: Wed, Jun 23, 2021 at 3:39 pm

To: clerk@park-ridge.us

To Whom it May Concern,

Our neighbor James Jernberg of Fiternal Health and Fitness has informed Crow Family Dental of a storage build he would like to add to the south/east corner of his building. We are approving this addition to his building. Please let us know if there is anything more we can help with.

Thank you,

Andrew Crow

(715) 344-6390

Ordinance 17.04 District Regulations (R82.4)

THE VILLAGE BOARD OF THE VILLAGE OF PARK RIDGE ORDAINS AS FOLLOWS:

Section I. ROAD WIDTH

In the Village of Park Ridge, road widths shall generally be sixty (60) feet. Permission for lesser widths down to fifty (50) feet may be granted by the Village Board.

Section II. DISTRICT REGULATIONS

1. Residence District Regulations.

- A. **Use Regulations.** In the residence district no building or land shall be used and no building shall be hereafter erected or structurally altered, unless otherwise provided in this ordinance, except for the following uses:
- i. One-family dwellings. No new residence shall be constructed unless the construction value of such residence equals \$50,000.00 or more exclusive of lot value and such residence as shown by the building plans contains a living space exclusive of basement of at least 1,500 square feet.
 - ii. Schools.
 - iii. Churches.
 - iv. Parks, playgrounds not conducted for profit.
 - v. One or two accessory buildings, not to exceed fifteen (15) feet in height and not to exceed a total square footage of 30% of the rear yard (see 17.01, Sect I, 26) or a maximum of 1,500 sq. ft., whichever is less. Accessory buildings must not be less than sixty (60) feet from the front line of the lot and not less than five (5) feet from any other lot line. In a lot zoned residential where no residence is built, no building may exceed nineteen (19) feet in height.
- B. **Height Regulations.** In the residence district no building shall hereafter be erected or structurally altered to exceed twenty-seven (27) feet in height or two (2) stories in height.
- C. **Area Regulations.**
- i. **Front Yards.** On every lot in the residence district there shall be a front yard having a depth of not less than thirty (30) feet, provided, however, as follows:
 - a. Where lots comprising forty (40) percent or more of the frontage on one side of a block are developed with buildings at the time of the adoption of this ordinance, having an average front yard with a variation in depth of not more than eight feet, no building hereafter

erected or structurally altered shall project beyond the average front yard line so established, provided further that this regulation shall not be so interpreted as to require a front yard depth of more than forty-five (45) feet.

- b. No front yard need exceed the average provided for the two adjoining buildings, one on either side thereof, if such two adjoining buildings are less than one hundred (100) feet apart.

ii. **Side Yards.**

- a. On every lot in the residence district there shall be two (2) side yards, one on each side of the building. For every dwelling hereafter erected or structurally altered which does not exceed twenty-seven (27) feet in height nor two (2) stories in height or sixty (60) feet in length, neither of such side yards shall be less than eight (8) feet in width.
- b. For every main building other than a dwelling and for every dwelling which exceeds twenty-seven (27) feet in height or two (2) stories in height or sixty (60) feet in length, neither of such side yard shall be less than ten (10) feet in width and the total width of such two (2) side yards shall not be less than twenty (20) feet.
- c. The side yard regulations in a. and b. of this paragraph shall apply to all lots including corner lots, except that in the case of a reversed corner lot, which faces an intersecting street, the side yard on the street side of such reversed corner lot shall have a width not less than fifty (50) percent of the front yard depth required on the lots in the rear of such reversed corner lot, and no accessory building on such reversed corner lot shall project beyond the front yard line of the lots in the rear of such reversed corner lot provided, however, that this regulation for reversed corner lots shall not have the effect of reducing the buildable width for the main building, to less than twenty-six (26) feet or for an accessory building to less than twenty (20) feet on any lot of record at the time of the adoption of this ordinance.

- iii. **Rear Yards.** On every lot in the residence district there shall be a rear yard having a depth of not less than twenty (20) percent of the depth of the lot, provided such rear yard need not exceed thirty (30) feet in depth.

- iv. **Application of Setback Requirements.** Where the side or rear yard includes an easement, the setback will be measured from the property line and the easement may be used to meet setback requirements; however, no construction may encroach into the easement. Where the side or rear yard abuts an alley, the setback will be measured from the edge of the alley closest to the yard (property line) and the alley will not be used to meet setback requirements.

2. **Business District Regulations.**

- A. **Use Regulations.** In the business district no building or land shall be used and no building shall be hereafter erected or structurally altered, unless otherwise provided in this ordinance, except for retail sales use compatible with surrounding uses. In no event shall the following uses be permitted:

- i. Laundry employing more than five (5) persons on the premises.
- ii. Lumber yard.
- iii. Sale or distribution of gasoline or petroleum products, service stations, or any type of servicing or repair of any type of motorized vehicle, small engine or marine-type engine.
- iv. Multiple family dwelling.
- v. Tavern.
- vi. Liquor store.
- vii. Sales of items normally intended for immediate consumption, unless the premises provide space and facilities to accommodate such consumption.
- viii. Any use not compatible with surrounding uses.

B. Height Regulations.

- i. In the business district no building hereafter erected or structurally altered shall exceed twenty-seven (27) feet in height at its lowest point of roof access or two (2) stories.
- ii. Where lots comprising more than one-half ($\frac{1}{2}$) of the frontage on one (1) side of a block are zoned residence and the lots comprising the remainder of said frontage are zoned business the height regulations for the residence district shall apply to the lots zoned business.

C. Area Regulations.

- i. **Side Yards.** In the business district no side yard shall be required except as follows:
 - a. Buildings erected for dwelling purposes exclusively shall comply with the side yard regulations of the residence district.
 - b. Where a building is erected for mixed use, namely, for both dwelling and business purposes, each story of such building used in any part for dwelling purposes shall, if more than two (2) rooms in depth, be provided with two (2) side yards, one (1) on each side of the building, neither of which shall be less than eight (8) feet in width, provided, however, that this regulation shall not apply to the street side of a corner lot.
 - c. Where a lot abuts upon the side of a lot zoned residence there shall be a side yard of not less than five (5) feet in width.
 - d. Every side yard that is provided, where not required by these regulations, shall be not less than three (3) feet in width.
- ii. **Rear Yards.** On every lot in the business district there shall be a rear yard having a depth of not less than twenty (20) percent of the depth of the lot,

provided, however, that the depth of such rear yard need not exceed twenty-five (25) feet for an interior lot nor fifteen (15) feet for a corner lot.

- iii. **Front Yards.** On every lot in the business district there shall be a front yard depth of not less than forty (40) feet.

3. **Planned Unit Development District Regulations.**

A. **Purpose and Use Regulations.** This district is intended to permit and promote, pursuant to Section 62.23(7)(b) of the Wisconsin Statutes, development that would derive maximum benefit from: coordinated area site planning, diversified location of structures, and mixed compatible uses, resulting in the provision of a safe efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities, and insuring adequate standards of construction and planning. Accordingly, the unified and planned development of a site, in single or corporate ownership or control at the time of application under this section, may be permitted in this District upon petition of the owners without the customary division into individual lots on public streets, or without specific compliance with the residence or business district regulations of this Ordinance as applicable to individual lots, subject to the regulations established hereinafter.

In the PUD District no buildings or land shall be used and no building shall hereafter be erected, except for:

- i. One-family dwellings, two-family dwellings, multiple-family dwellings.
 - ii. Parks, playgrounds, not conducted for profit.
 - iii. Clubs, excepting those the chief activity of which is a service customarily carried on as a business.
 - iv. Offices, or customer service establishments or retail businesses compatible with offices and with adjacent residential uses by virtue of hours of operation, traffic, nature of products sold, or services rendered.
 - v. Accessory buildings or uses customarily incident to the above permitted uses including private roads, and off-street parking.
- B. **Height Regulations.** In this district no building shall be erected or altered to exceed twenty-seven (27) feet in height at its lowest point of roof access or two (2) stories.
- C. **Area Regulations.** Around the periphery of lands included within the district, front yards, side yards, and rear yards where they abut neighboring property or a public street shall be no less than are required by Subsection One Residence District Regulations. Stricter limitations in Section I.3.F (below) will also apply. Other internal yard spaces shall be approved as specified within Ordinance 17.05 hereof.
- D. **Minimum Residential Floor Area.** Dwelling Units exclusive of basements shall contain no less floor area than as approved in accord with Ordinance 17.05 hereof.

- E. **Minimum Project Area.** No lands shall be placed in this district unless the proposed development encompasses the following minimum areas:

<u>Proposed Principal Uses</u>	<u>Minimum Project Size</u>
Residential & Open Space Uses	100,000 Square Feet
Mixed Compatible Uses	100,000 Square Feet

- F. **Limitations.**

- i. No buildings shall be located on any lot nearer than 25 feet to the front lot line; nor nearer than 20 feet to the rear lot line; nor nearer than 38 feet total for both sides. Minimum of 19 feet on any one side, with the exceptions of cul-de-sac lots #5 and #6, which have minimum side yard setbacks of 10 feet on each side.
- ii. Secondhand homes, mobile homes, basements, tents, shacks, garages, barns or any other outbuildings are not to be erected or moved onto any lot to be left on or lived in either temporarily or permanently. One outbuilding not larger than 100 square feet shall be permitted for the storage of boats, snowmobiles, garden equipment, etc., provided they are of similar design and finish of the house erected on said lot.
- iii. Any vehicles or trailers, recreational or otherwise, when not in use shall be stored in the garage of the properties they occupy.
- iv. No animals, livestock, pets, poultry of any kind shall be raised, bred or kept on any Lot or unit parcel, except that household pets for personal, noncommercial purposes of the unit occupants may be kept, provided they are housed within the interior of the living unit. No pets shall be kept outside of the living unit unless on a leash not exceeding 10 ft. in length and attended by the presence and control of the owner and/or a family member.
- v. Any fences must be approved by the Village Building Inspector. Fences are permitted only in the rear yards. No fence shall be constructed closer than 2 feet from any property line or the line which would be the extension of the common party wall separating the units unless a letter signed by the adjacent property owner granting permission for a fence erected on the lot line is submitted to the Village Building Inspector. No fence shall be more than 6 feet high.
- vi. All utilities, including phone, cable, gas, electricity will be buried underground.
- vii. Lots will be sold for owner occupancy, but the owner of an entire twin home may rent out one unit if said owner occupies the other unit. Lot 2 (39 & 41 Angelo Court), Lot 3 (35 & 37 Angelo Court) and Lot 4 (31 & 33 Angelo Court) with frontage on the south side of Angelo Court may have non-owner-occupied twin homes, provided the renter occupants are over the age of 55.
- viii. All units may only be occupied by a single family, as defined by Park Ridge municipal codes.

Section III. SEVERABILITY

The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

Section IV. EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

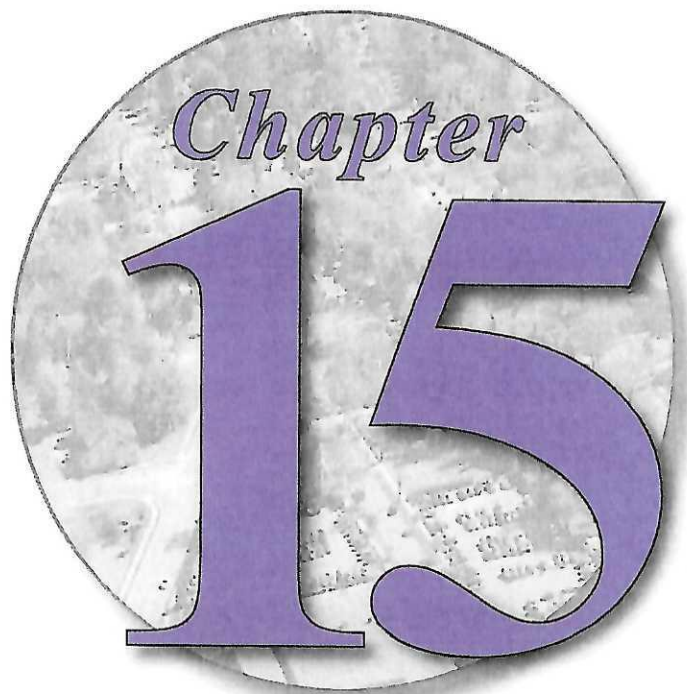
Passed and adopted by the Village Board of the Village of Park Ridge on this sixteenth day of December, 2019.

s/ _____
Steve Bergin
Village President

s/ _____
Kathy Bemowski
Village Clerk

Attest: s/ _____
Kathy Bemowski
Village Clerk

Variations



Whereas permitted and conditional uses 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.¹⁴⁰ Two types of zoning variances are generally recognized: **Area variances** provide an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.¹⁴¹ **Use variances** permit a landowner to put a property to an otherwise prohibited use.¹⁴² Though not specifically restricted by statute or case law,¹⁴³ use variances are problematic for reasons discussed on page 102. Variance decisions related to zoning are always heard by the zoning board of adjustment or appeals.

¹⁴⁰ *Fabyan v. Waukesha County Bd. of Adjustment*, 2001 WI App 162, 246 Wis. 2d 851, 632 N.W.2d 116

¹⁴¹ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁴² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

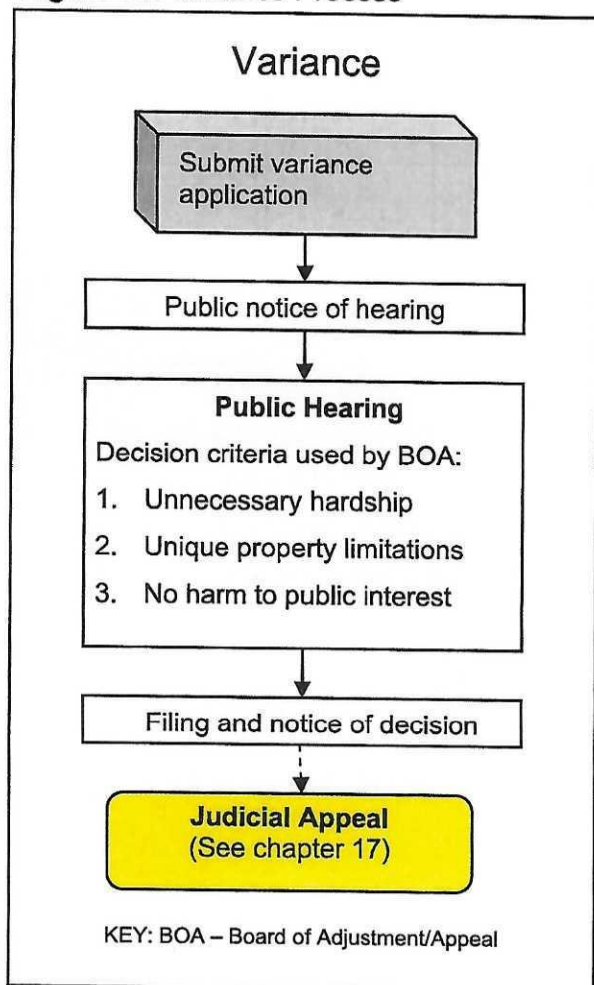
¹⁴³ In the past, it was doubtful that zoning boards of adjustment in Wisconsin had the authority to grant use variances [see *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 133 N.W.2d 795 (1965)]. Now, the Supreme Court has determined that boards of adjustment do have the authority to issue use variances [see *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514].

What are the criteria for granting a variance?

To qualify for a variance, an applicant has the burden of proof to demonstrate that all three criteria defined in state statutes and outlined below are met.¹⁴⁴

- Unnecessary hardship
- Unique property limitations
- No harm to public interests

Figure 24: Variance Process



Local ordinances and case law may also specify additional requirements. The zoning department can assist a petitioner in identifying how these criteria are met by providing clear application materials that describe the process for requesting a variance and the standards for approval (see the sample application form in Appendix D).

1. Unnecessary Hardship

The Wisconsin Supreme Court distinguishes between area and use variances when applying the unnecessary hardship test:

For a **use variance**, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance.¹⁴⁵ What constitutes *reasonable use* of a property is a pivotal question that the board must answer on a case-by-case basis. If the property currently supports a reasonable use, the hardship test is not met and a variance may not be granted. If a variance is required to allow reasonable use of a property, only that variance which is essential to support reasonable use may be granted and no more. A proposed use may be *reasonable* when it:

¹⁴⁴ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d at 420, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d at 254, 469 N.W.2d 831 (1991).

¹⁴⁵ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 413-414, 577 N.W.2d 813 (1998).

- does not conflict with uses on adjacent properties or in the neighborhood,
- does not alter the basic nature of the site (e.g., conversion of wetland to upland),
- does not result in harm to public interests, and
- does not require multiple or extreme variances.

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.”¹⁴⁶ To determine whether this standard is met, zoning boards should consider the purpose of the zoning ordinance in question (see the appendix for information about the purposes of shoreland and floodplain zoning), its effects on the property, and the short-term, long-term, and cumulative effects of granting the variance.¹⁴⁷

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*. In light of increased focus on the purposes of a zoning restriction, zoning staff and zoning boards have a greater responsibility to explain and clarify the purposes behind dimensional zoning requirements.

2. Hardship Due to Unique Property Limitations

Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance.¹⁴⁸ The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances.¹⁴⁹ Property limitations that prevent ordinance compliance and are common to a number of properties

¹⁴⁶ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d at 475, 247 N.W.2d 98 (1976) (quoting 2 Rathkopf, *The Law of Zoning & Planning*, § 45-28, 3d ed. 1972).

¹⁴⁷ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁴⁸ *State ex rel. Spinner v. Kenosha County Bd. of Adjustment*, 223 Wis. 2d 99, 105-6, 588 N.W.2d 662 (Ct. App. 1998); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 410, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 255-56, 469 N.W.2d 831 (1991); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478, 247 N.W.2d 98 (1976)

¹⁴⁹ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98

should be addressed by amending the ordinance.¹⁵⁰ For example, an ordinance may, in some cases, be amended to provide reduced setbacks for a subdivision that predates the current ordinance and where lots are not deep enough to accommodate current standards.

3. No Harm to Public Interests

A variance may not be granted which results in harm to public interests.¹⁵¹ In applying this test, the zoning board should review the purpose statement of the ordinance and related statutes in order to identify public interests. These interests are listed as objectives in the purpose statement of an ordinance and 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
- Any other public interest issues

In light of public interests, zoning boards 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.¹⁵² Review should focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

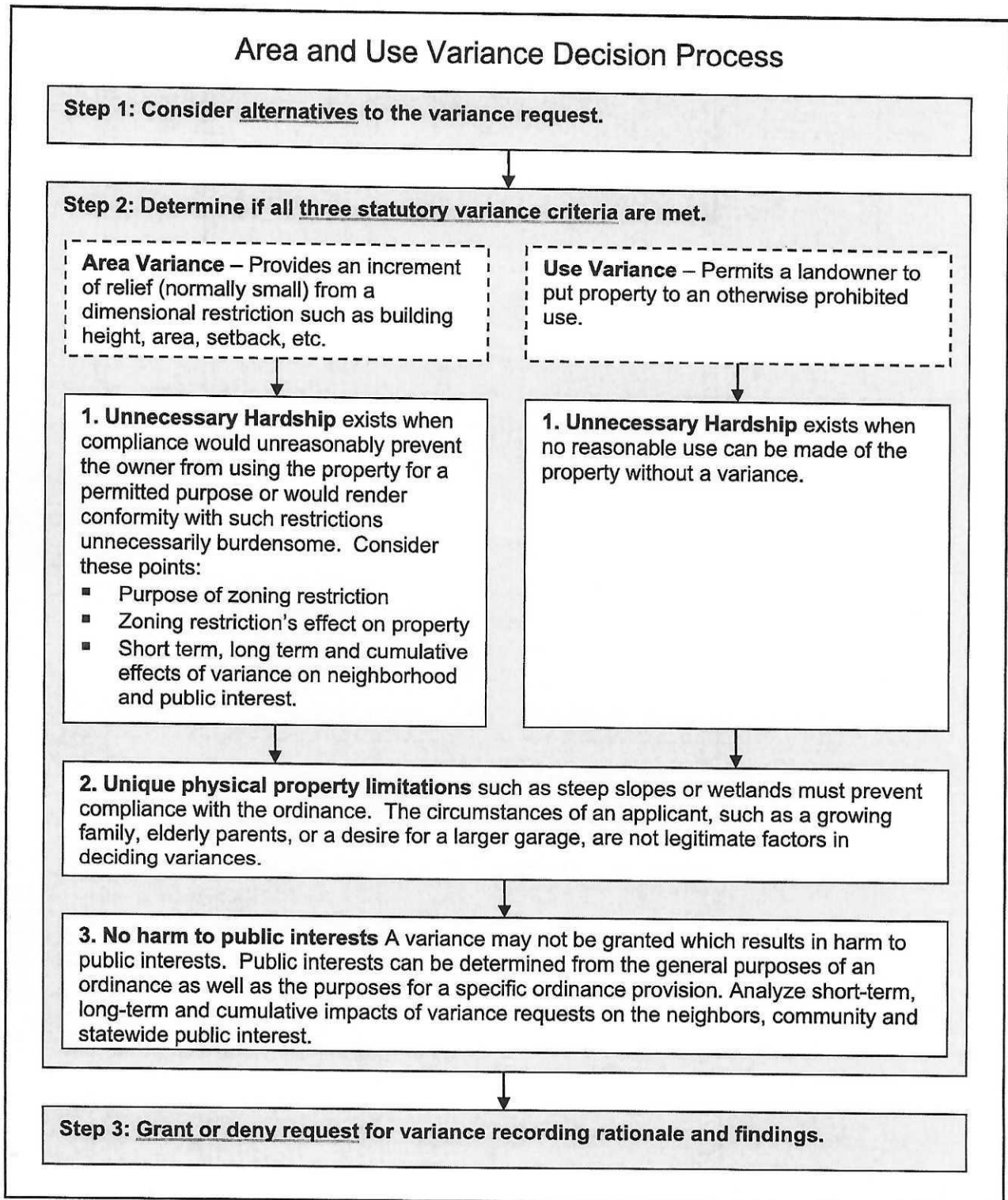
The flow chart in Figure 25 summarizes the standards for area variances and use variances. Application forms and decision forms reflecting these standards are included in *Appendix D*.

¹⁵⁰ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 256, 469 N.W.2d 831 (1991); *State v. Winnebago County*, 196 Wis. 2d 836, 846, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵¹ *State v. Winnebago County*, 196 Wis. 2d 836, 846-47, 540 N.W.2d 6 (Ct. App. 1995); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 407-8, 577 N.W.2d 813 (1998)

¹⁵² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

Figure 25: Area and Use Variance Decision Process



Additional Standards

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 zoning board should rely on in their decision-making. Published court decisions provide guidance for board members and are cited in the endnotes. Websites for accessing case law are provided in *Appendix B*.

- **Parcel-as-a-whole.** The entire parcel, not just a portion of the parcel, must be considered when applying the unnecessary hardship test.¹⁵³
- **Self-imposed hardship.** An applicant may not claim hardship because of conditions which are self-imposed.¹⁵⁴ 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.¹⁵⁵
- **Financial hardship.** Economic loss or financial hardship do not justify a variance.¹⁵⁶ 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.¹⁵⁷
- **Objections from neighbors.** A lack of objections from neighbors does not provide a basis for granting a variance.¹⁵⁸

¹⁵³ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵⁴ *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 163, 133 N.W.2d 795 (1965); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 479, 247 N.W.2d 98 (1976).

¹⁵⁵ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

¹⁵⁶ *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).

¹⁵⁷ *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Div. 1940)

¹⁵⁸ *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.¹⁵⁹

Are there any limits on granting a variance?

Minimum variance allowed

The board may grant only the minimum variance needed.¹⁶⁰ For a use variance, the minimum variance would allow reasonable use, whereas for an area variance, the minimum variance would relieve unnecessary burdens. For example, if a petitioner requests a variance of 30 feet from setback requirements, but the zoning board finds that a 10-foot setback reduction would not be unnecessarily burdensome, the board should only authorize a variance for the 10-foot setback reduction.

Conditions on development

The board may impose conditions on development (mitigation measures) to eliminate or substantially reduce adverse impacts of a project under consideration for a variance. Conditions may relate to project design, construction activities, or operation of a facility¹⁶¹ and must address and be commensurate with project impacts (*review the essential nexus and rough proportionality tests in Chapter 14*).

Specific relief granted

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 zoning board. The variance applies only for the current project and not for any subsequent construction on the lot. Referring to Figure 26 on the next page, if the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.

Variances 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. In

Nonconforming Structure – A building or other structure, lawfully existing prior to the passage of a zoning ordinance or ordinance amendment, which fails to comply with current dimensional standards of the ordinances.

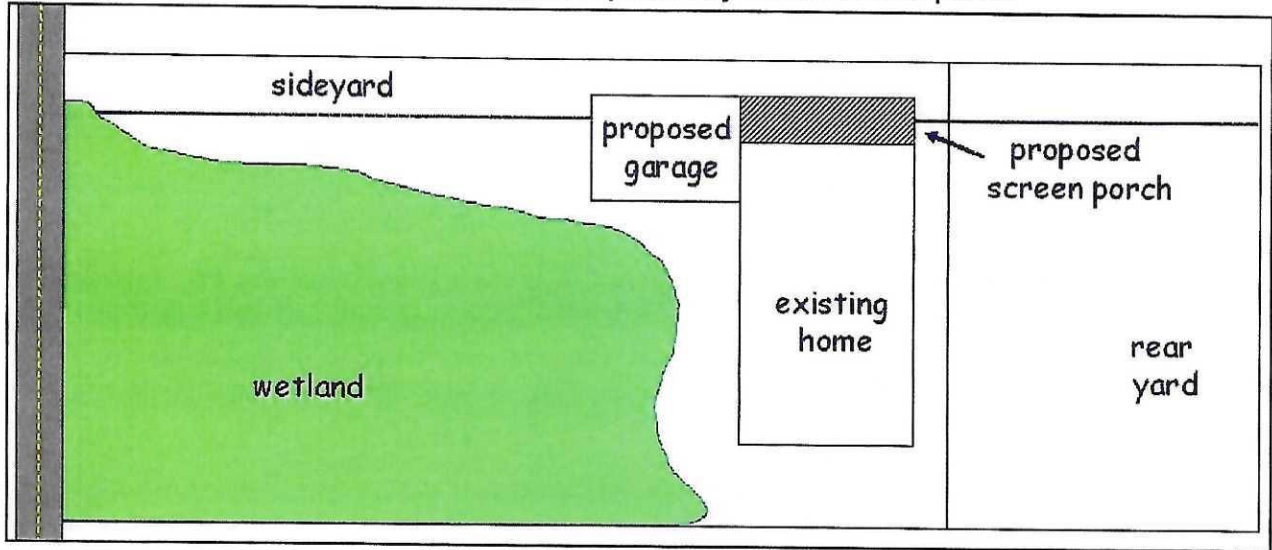
¹⁵⁹ *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); see also *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998).

¹⁶⁰ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, s. 20.86, pp. 624-5

¹⁶¹ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, ss. 20.70 and 20.71, pp. 587-95

Figure 26: A Variance Grants Specific Relief

If the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.



contrast, nonconforming structures may be assured a limited extent of future expansion in some ordinances.

Variance transfers with the property

Because a property rather than its owner must qualify for a variance to be granted (unique property limitations test), a variance transfers with the property to subsequent owners.¹⁶²

Are multiple variances allowed?

Multiple variances for a single project

In some cases, a single project may require more than one variance to provide reasonable use of a property. The 3-step test should be applied to each variance request in determining whether relief can be granted by the zoning board.

Sequential variances

In other cases, original development of a property may have been authorized by variance(s). The owner later requests an additional variance. Generally, the later request should be denied since, in granting the original variance, the zoning board was required to determine that a variance was essential to provide reasonable use of the property or that not granting the (area) variance would have been unreasonably burdensome in light of the ordinance purpose. The board cannot subsequently find the opposite unless there

¹⁶² *Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 523-24, 340 N.W.2d 558 (Ct. App. 1983)

have been significant changes on the property or on neighboring properties. A later variance could also be granted if the written purpose of the zoning designation for which an area variance was sought significantly changed, thereby allowing the variance to qualify under the unreasonably burdensome standard.

What is the process for appealing a variance decision?

A variance 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 office of the board.¹⁶³ (See *Chapter 17 Judicial Appeal of Zoning Board Decisions*.)

Why are the standards for area variances different from those of use variances?

The law treats area and use variances differently because they “serve distinct purposes,” “affect property rights in distinct ways,” and “affect public and private interests differently.” According to the *Ziervogel* decision, the adverse impacts of an area variance are thought to be less than those of a use variance. Furthermore, the “no reasonable use” standard associated with use variances leaves zoning boards “with almost no flexibility” and eliminates the statutory discretion of zoning boards to decide variances.

Figure 27: Land Division Variances... Creatures of a Different Color

So far our discussion has focused only on zoning variances. As zoning boards may be asked to decide land division variances (including subdivision ordinances), here are a few salient points:

- Subdivision variances are not the same as zoning variances.
- There is no Wisconsin law addressing land division variances.
- A local unit of government may allow variances to locally-determined land division standards. In this case they must determine the process and standards, and should include them in the land division or subdivision ordinance.
- Local units of government may choose to not allow land division variances.
- A local unit of government is not allowed to provide a variance to a state-mandated standard.
- Due process, including a hearing with public notice is required for land division variances.

¹⁶³ Wis. Stat. § 59.694 (10)

AREA VARIANCES AND USE VARIANCES

What is the difference between an area variance and a use variance?

It may not always be easy to determine if an applicant is seeking an area variance or a use variance. It is arguable that a large deviation from a dimensional standard, or multiple deviations from several dimensional standards on the same lot, may constitute a use variance instead of an area variance. For example, allowing significantly reduced setbacks could have the same effect as changing the zoning from one residential zoning district that requires significant setbacks and open space to a second residential zoning district that has minimal setbacks and open space.

Based on majority opinions of the Wisconsin Supreme Court,¹⁶⁴ it appears that, in order to draw the line between area variances and use variances, zoning boards should consider the degree of deviation from each dimensional standard for which a variance is sought in order to determine if the requested variance would “permit wholesale deviation from the way in which land in the [specific] zone is used.”¹⁶⁵ A proactive community seeking to consistently differentiate between area variances and use variances could adopt an ordinance provision similar to the following:

Unless the board of adjustment finds that a property cannot be used for any permitted purpose, area variances shall not be granted that allow for greater than a ___% (or ___ foot) deviation in area, setback, height or density requirements specified in the ordinance.

Why are use variances discouraged?

Wisconsin Statutes do not specifically prohibit use variances. However, courts recognize that they are difficult to justify because they may undermine ordinance objectives and change the character of the neighborhood.¹⁶⁶ Some Wisconsin communities prohibit use variances in their ordinances. There are a number of practical reasons why they are not advisable:

■ **Unnecessary hardship must be established in order to qualify for a variance.**

This means that without the variance, none of the uses allowed as permitted or conditional uses in the current zoning district are feasible for the property. This circumstance is highly unlikely.

■ **Many applications for use variances are in fact administrative appeals.**

Often the zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a use variance but an appeal of the administrator’s interpretation of ordinance text.

■ **Zoning amendments are a more comprehensive approach than use variances.**

When making map or text amendments to the zoning ordinance, elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses and may undermine neighborhoods and the goals established for them in land use plans and ordinances. Towns also have meaningful input (veto power) on zoning amendments to general zoning ordinances.

¹⁶⁴ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

¹⁶⁵ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁶⁶ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 412 fn. 10, 577 N.W.2d 813 (1998); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 473, 247 N.W.2d 98 (1976).