

VARIANCE APPLICATION PACKET – TOWN OF MADGE

The Town of Madge has adopted a land division ordinance that regulates the size a lot can be. Appeals to these regulations must meet specific criteria prior to being granted. The Madge Town Board is authorized by law to review requests, such as yours, to vary or alter the rules established in the land division ordinance.

The Board, however, is required to review your request within specific variance standards established by law. You, as an applicant, must clearly show the Board that all of these standards are met before they can grant your request.

An applicant is entitled to a variance only upon a showing of unnecessary hardship, which must relate to a unique condition affecting the land. It does not include a condition personal to the owner of the land, mere inconvenience, or a self-created problem. Unnecessary hardship is further explained, for purposes of a dimensional variance, as a situation where under compliance with the strict letter of the restrictions governing area would render conformity with such restrictions unnecessarily burdensome.

Prior to applying for a variance please consider the facts of your request. Will the Board be able to determine that your variance request meets the legal requirements for a variance?

Legal Standards for Variances (“Three Step Test”)

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

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:

1. Unnecessary hardship is a situation where, in the absence of a variance, an owner is unable to use the property for a purpose permitted by the ordinance (use variance), or strict conformity is unnecessarily burdensome (area variance). In most cases, if a property already is developed and has an established use, it is unlikely that a hardship will exist.
2. The hardship must be peculiar to the zoning parcel in question and different from other parcels, not one that affects all parcels similarly.
3. 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.
4. 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.
5. The Board is to consider the underlying purpose of the ordinance standards in considering whether a hardship is present.

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 land division ordinance. Such limitations may arise due to steep slopes, wetlands, or parcel shape that limits the reasonable use of the property.

Protection of the Public Interest – Granting of a variance must neither harm the public interest nor undermine the purpose of the ordinance. In granting a variance, the Board may attach special conditions to ensure that the public interest will not be damaged. Such conditions must relate reasonably to the purpose and intent of the ordinance. Also, any variance granted should include only **minimum relief** necessary to allow reasonable use of property.

PROCESS

At the time of application you will be asked to:

1. Complete an application form and submit a non-refundable fee
2. Provide detailed plans describing your lot and division of said lot
3. Provide a written statement showing that your project meets the legal criteria (three step test) for a variance; and
4. Stake out lot lines and the proposed division of your property so the Board may inspect the site

Upon submission of your variance request, the Town Clerk will publish notice of your request for a variance in the Town's official newspaper noting the location and time of the required public hearings. The burden will be on you as property owner to provide variable facts upon which the Board will base its decision. At the hearings you may appear in person or be represented by agent or attorney. If any of these requirements are not met or if you or your agent does not appear at the public hearings, the Board shall deny your request for a variance and your fee will be forfeited.

IF YOU QUALIFY FOR A VARIANCE

- The Town Board may grant only the minimum variance, which preserves a reasonable use of a parcel for its owner.
- The Town Board may impose conditions to assure that public interests are protected.
- A variance decision may be appealed to circuit court by an aggrieved party within 30 days of filing of the decision in the Town Clerks office. You are warned that aggrieved persons may appeal any decision of the Town Board, which grants a variance. As such, Town Board decisions should not be considered final until the passage of thirty (30) days after filing of the Town Board's written decision. Applicants may want to delay activity pending the end of said appeal period or until all appeal rights have been exhausted to avoid being ordered to restore property to its pre-application state.
- Because the property rather than its owner qualifies for a variance (unique property limitations test), a variance transfers to subsequent property owners, unless otherwise restricted by the Town Board.

APPLICATION FOR VARIANCE PERMIT: LAND DIVISION ORDINANCE

INSTRUCTIONS;

The Town of Madge has determined that small tracts of land are inimical to the rural and agricultural character of the land contained within its corporate boundaries and that such subdivision of land less than five acres is not consistent with the town's comprehensive plan.

The Town of Madge Land Division Ordinance reads as follows:

- (1) Land located within the political borders of the Town of Madge, Washburn County, Wisconsin, may not be subdivided to create any real property lot less than five acres, as measured from any road right-of-way.**

The ordinance, however, provides for a variance procedure as follows:

- (2) Variances from the restriction of sub. (1) may be reviewed by the town board upon application by the landowner seeking relief from the land division ordinance. The legal standard shall be whether enforcement of the land division ordinance creates a substantial hardship upon the landowner due to characteristics inherent in the property and that are not created by the owner.**
- (3) Hearings on variances shall be conducted in accordance with municipal administrative law under Chapter 68. The party seeking application for variance shall be responsible for the cost of publishing the Class 1 notice of a hearing on the application as well as mailed notice to adjacent landowners and such amount shall be remitted with the application for variance.**

An applicant is entitled to a variance only upon a showing of unnecessary hardship, which must relate to a unique condition affecting the land. It does not include a condition personal to the owner of the land, mere inconvenience, or a self-created problem. Unnecessary hardship is further explained, for purposes of a dimensional variance, as a situation whereunder compliance with the strict letter of the restrictions governing area would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. For purposes of a use variance, an unnecessary hardship requires demonstration that in the absence of a variance, no reasonable use may be made of the property.

PLOT PLAN A plot plan must show all of the following information. Please check the box to verify that you have included each item. If the situation does not apply, write "N/A".

Show the location of:

- Well
- Septic tank, holding tank or drainfield
- Existing and proposed structures with dimensions noted
- Lakes, ponds, streams, rivers, wetlands and flowages
- Driveway and turnaround (if applicable) with length and width noted
- All public roads

Show distance of any existing or proposed structure (including new additions) from:

- Ordinary high water mark of all lakes, ponds, streams, rivers, and flowages
- Wetlands
- Centerline and/or right-of-way of any public road
- Side and rear property lines
- Other structures

North

Application for a Variance from the Madge Town Board

The applicant must demonstrate that: (1) compliance with the strict letter of the restrictions governing area would prevent the owner from using the property for a permitted purpose (use variance), or would render conformity with such restrictions unnecessarily burdensome (area variance). Further, the applicant must prove that (2) there is an unnecessary hardship related to physical limitations of the property, not the circumstances of the applicant, and that (3) the proposal will not be contrary to the public interest. These three legal standards are sometimes referred to as the "three step test." For a complete application, you must address how you meet the "three step test" (you may use a separate sheet).

Date of application _____

Property owner _____

Phone # (____) _____

Address

Legal

Description _____

Type of Variance Requested (check one)

Relief from Land Division Ordinance

Other (describe): _____

Present improvements (attach a concise plot plan)

Proposed improvements

Reason for request

I agree to allow Town officials charged with administering Township Ordinances, or other authorized persons, including the assessor, to have access to the above-described premises at any reasonable time for the purpose of inspection. Further, I acknowledge that approval of this variance does not eliminate the need to obtain a land use permit from the Zoning Office and any applicable State or Town permits.

(Applicant or representative signature) (Print Name) (Date signed)

(Mailing address and phone # if different than above)

OFFICE USE

Application # _____ Non-Refundable Fee _____

Map # _____ Record Id# _____

Property Description _____ 1/4 _____ 1/4 _____ 1/4, Sect. _____ Twp. _____ R. _____

Town of _____ Fire # _____ Lot _____ Block _____

Subdivision _____ Lot size _____ acres.

Zoning Dist. _____

Dates Published _____

Hearing Date _____

Variance from _____ (Sect./Div.) of Zoning or

_____ Ordinance.

Decision of Town Board of Madge

Findings of Fact

Upon the basis of the contents of the variance application, the town ordinance, state law, and the testimony and exhibits entered into the record, the Board *[makes the attached Findings of Fact] [in reliance upon the facts set forth in the record, issues the following decision]*.

Conclusions of Law

VARIANCE – The variance must meet all three of the following tests:

1. That this is a case involving a proposed variance from dimensional requirements of the Town of Madge Land Division Ordinance
2. That the applicant [has] [has not] demonstrated an unnecessary hardship because:
 - a. There [is] [is not] proof of existence of a condition unique to the property.
 - b. The condition demonstrated [is] [is not] personal to the applicant.
 - c. The condition demonstrated [is] [is not] a mere inconvenience.
 - d. The condition demonstrated [is] [is not] self-created.
 - e. That the hardship consists of a situation where under compliance with the strict letter of the restrictions governing area [will] [will not] unreasonably prevent the owner from using the property for a permitted purpose or [will] [will not], in the absence of a variance, be such that no reasonable use may be made of the property. *[Strike whichever is inapplicable]*
3. That the proposed variance [will] [will not] detract from the purpose of the Land Division Ordinance and [will] [will not] be contrary to the public interest.

Order and Determination

On the basis of the above Findings of Fact, Conclusions of Law, and the record in this matter, the Board orders: VARIANCE – The requested variance is [denied] [granted] [granted in part] subject to the following conditions: _____

_____.

Any privilege granted by this decision must have a CSM on record at the Washburn County Land Division Office within 90 days. 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 and opportunity to be heard for violation of any of the conditions imposed.

MADGE TOWN BOARD

By: _____, Chairperson

_____, Supervisor

_____, Supervisor

Date: _____

Attested:

_____, Town Clerk

Any party aggrieved by a decision by the town board upon an application for a variance of the land division ordinance may appeal within 30 days of the rendering of a written decision to the Washburn County circuit court by means of *certiorari*. Section 68.13(1), Stats.