

## Article O: Appeals

---

### Sec. 13-1-280 Appeals to the Zoning Board of Appeals.

- (a) **Scope of Appeals.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Osseo affected by any decisions of the administrative officer. Such appeal shall be taken within thirty (30) days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof together with payment of a filing fee as may be established by the Common Council. The officer(s) from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) **Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) **Powers of Zoning Board of Appeals.** In addition to these powers enumerated elsewhere in this Code of Ordinances, the Zoning Board of Appeals shall have the following powers:
- (1) **Errors.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator or Building Inspector.
  - (2) **Variances.** To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured.
  - (3) **Interpretations.** To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts; the Plan Commission may make a recommendation but is not mandatory.
  - (4) **Substitutions.** To hear and grant applications for substitution or more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made; the Plan Commission may make a recommendation but is not mandatory. Whenever the Zoning Board of Appeals permits such a substitution, the use may not thereafter be changed without application.
  - (5) **Unclassified Uses.** To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal

uses permitted in the district; the Plan Commission may make a recommendation but is not mandatory.

- (6) **Temporary Uses.** To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involved the erection of a substantial structure and are compatible with the neighboring uses; the Plan Commission may make a recommendation but is not mandatory. The permit shall be temporary, revocable, subject to any condition required by the Zoning Board of Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.
- (7) **Permits.** The Zoning Board of Appeals may reverse, affirm wholly or partly, modify the requirements appealed from and may issue or direct the issue of a permit.

### **Sec. 13-1-281 Hearing on Appeals.**

The Zoning Board of Appeals shall fix a reasonable time for the hearing shall fix a reasonable time for the hearing, cause notice thereof to be published in the official newspaper not less than seven (7) days prior thereto, cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five (5) days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five (5) days prior to the hearing of the fee owners of records of all land within one hundred (100) feet of any part of the subject building or premises involved in the appeal.

### **Sec. 13-1-282 Decisions of Zoning Board of Appeals.**

- (a) **Timeframe.** The Zoning Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
- (b) **Conditions.** Conditions may be placed upon any zoning permit ordered or authorized by the Zoning Board of Appeals.
- (c) **Validity.** Variances, substitutions or use permits granted by the Zoning Board of Appeals shall expire within eighteen (18) months unless substantial work has been commenced pursuant to such grant.

### **Sec. 13-1-283 Variances.**

- (a) **Purpose.**
  - (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him/her

undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.

- (2) The Zoning Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.
- (3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.

(b) **Application for Variances.** The application for variation shall be filed with the City Clerk. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

- (1) Name and address of applicant and all abutting and opposite property owners of record.
- (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
- (3) Address and description of the property.
- (4) A site plan showing an accurate depiction of the property.
- (5) Additional information required by the City Clerk, Building Inspector, City Engineer, Zoning Board of Appeals and/or Zoning Administrator.

(c) **Public Hearing of Application.**

- (1) The Zoning Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given no more than thirty (30) days and not less than seven (7) days before the hearing in one (1) or more of the newspapers in general circulation in the City, and shall give due notice to the parties in interest, the Zoning Administrator and the Common Council. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Zoning Board of Appeals shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Common Council.

- (d) **Action of the Zoning Board of Appeals.** For the Zoning Board of Appeals to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
  - (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
  - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
  - (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
  - (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.
- (e) **Conditions.** The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.
- (f) **Standards for Qualifying For a Variance.** To qualify for a variance, the applicant must demonstrate that their property meets the following three (3) requirements:
- (1) **Unique Property Limitations.**
    - a. The applicant must show that the property has conditions that are unique or special to that property, that such unique physical characteristics prevent compliance with the regulations of his Zoning Code. Examples, but not limited to, of such conditions are physical limitations unique to the property such as wetlands or exceptionally unique steep slopes.
    - b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the “unique property limitation” test:
      1. Financial considerations of the applicant.
      2. The personal circumstances of the applicant (i.e. need for an expanded garage, a growing family, an unemployed family member returning home, etc.).
      3. The existence of nearby Zoning Code violations.
      4. Lack of objections from neighbors.
  - (2) **No Harm to Public Interests.** To qualify for a variance, the applicant must demonstrate that the proposed variance is not contrary to the public interest. In

applying this test, the Zoning Board of Appeals must consider the impacts of the variance proposal, and, if setting a precedent, the cumulative impacts of similar projects on the interests of the neighbors, the overall City of Osseo and the general public. Such factors are generally identified in Section 13-1-4.

(3) **Unnecessary Hardship.**

- a. To qualify for a variance, the applicant must demonstrate that the special condition(s) of the property creates an unnecessary hardship. When determining whether an unnecessary hardship exists, the property as a whole shall be considered rather than a portion of the property.
- b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the “unnecessary hardship” test:
  1. Conditions which are self-imposed or created by a prior owner (i.e. owner expands home and then argues there is no suitable location for a proposed new garage).
  2. Economic or financial hardship to the applicant (i.e. construction of a new garage in a complying location would cost more than placing the garage in a location requiring a variance).
  3. Lack of objections from neighbors.
- c. Due to Wisconsin court decisions, the “unnecessary hardship” determination requires that the Zoning Board of Appeals apply different tests for use variances and area variances:
  1. For a use variance, unnecessary hardship can be determined to exist only if the property owner can show that he/she would have *no reasonable use of the property* without a variance. A use variance would permit a property owner to put property to an otherwise prohibited use.
  2. For an area variance, unnecessary hardship can be determined to exist only if the property owner can show that compliance with the requirements of the Zoning Code would *unreasonably prevent the property owner from using the land for a permitted purpose* (leaving the property owner without any use that is permitted for the property under the Zoning Code) or would render *conformity with such zoning restrictions unnecessarily burdensome*. Area variances are intended to provide an increment of relief (usually small) from a physical dimensional requirement of the Zoning Code such as building height or setback requirements. In applying the test for area variance, the Zoning Board of Appeals shall consider the purpose of the Zoning Code, the Zoning Code’s restrictions on the applicant’s property, and the cumulative effects of granting of a variance would have on the neighborhood, community and on the public interests.
  3. Unless the Zoning Board of Appeals finds that a property cannot be used for any permitted purpose, area variances shall not be

granted for greater than a forty percent (40%) deviation in the area, setback, height or density requirements specified in this Chapter.

(Note: The above standards reflect the Wisconsin Supreme Court's decisions in *State ex rel. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Board of Adjustment*, 2004 WI 56, \_\_Wis. 2d\_\_, 679 N.W.2d 514).

**Sec. 13-1-284 Review by Court of Record.**

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Zoning Board of Appeals.

**Sec. 13-1-285 through Sec. 13-1-299 Reserved for Future Use.**