

**ORDINANCE AMENDMENT RELATED TO
SECTION 1.098, VARIANCES
AMENDMENT #23-03**

Whereas, sec. 1.098 of the Town Zoning Ordinance contains the standards upon which variance may be granted in appropriate cases;

Whereas, the Wisconsin Legislature has authorized the grant of “use variances” to permit the use of property where the literal application of the zoning ordinance would work a hardship on the property owner;

Whereas, recent circumstances involved the actual or threatened imposition of extraterritorial zoning on towns have made use variance a possible means to permit owners to make reasonable use of their property;

Whereas, the towns which share a zoning ordinance have reviewed the concept and recommend adoption of the following ordinance amendment to sec. 1.098;

NOW, THEREFORE, the Town Board of the Town of Blue Mounds does hereby ordain as follows:

Article One. Section 1.098 Variances is amended as shown below:

(1) Intent. (a) Zoning variances are a discretionary action which provides relief from practical difficulties or unnecessary hardships resulting from strict application of zoning ordinance requirements.

(b) A property owner bears the burden of proving “unnecessary hardship,” as that term is used in this section, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance.

(c) In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

(2) Applicability; Authorized Variances. The board of zoning appeals is authorized to grant variances to the provisions of this zoning ordinance in accordance with the variance procedures of this section, except that these variance procedures may not be used to:

(a) Waive, modify or otherwise vary any of the review and approval procedures;

(b) Waive, vary, modify or otherwise override a condition of approval or requirement imposed by an authorized decision-making body or the state or federal government;

(c) Waive, vary or modify applicable "minimum lot area per unit" (density) standards for a land division or subdivision under the Town’s subdivision ordinance.

(d) Waive, vary or modify provisions over which jurisdiction for exceptions or other modifications is assigned to another decision-making body; or

- (e) Waive, vary or modify provisions for which variances are expressly prohibited.
- (3) Authority to File. Variance applications may be filed by eligible applicants or an eligible applicant's authorized agent
- (4) Application Filing. Variances applications must be filed with the zoning administrator. The application must contain detailed information in support of the application, including a scale map of the parcel involved showing the dimensions of the lot, sideyards, setbacks and building sizes and heights. The application shall include photographs depicting the site.
- (5) Transmittal to Board of Zoning Appeals. The zoning administrator shall transmit the variance application to the board of zoning appeals before their hearing on the matter.
- (6) Notice of Hearing.
- (a) Class 1 notice of the board of zoning appeals' required hearing on a variance application must be published in accordance with chapter 985 of the Wisconsin Statutes.
- (b) Notice must be mailed to all of the following at least 7 days before the board of zoning appeals' required hearing:
1. the subject property owner; and
 2. all owners of property within 100 feet of the subject property.
 3. Notice of the filing of a variance application must be forwarded to the Town Board.
 4. If the property is located in a shoreland or a floodplain, or within 75 feet of a wetland, the application also shall be sent to the Dane County Department of Planning and Development.
- (7) Hearing and Final Decision.
- (a) The board of zoning appeals must hold a hearing to consider the variance request.
- (b) Following the close of the hearing, the board of zoning appeals must make its findings of fact and act to approve the requested variance, approve the variance with modifications and/or conditions, or deny the variance request based on the review criteria and standards of subsection (8).
- (c) Approval of a variance requires a simple majority vote of board of zoning appeals' members present and voting.
- (8) General Review Criteria and Standards. No variance may be approved unless the board of zoning appeals finds that all of the following conditions exist:
- (a) Exceptional circumstances exist pertaining to the subject lot;
 - (b) That the requested variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity;
 - (c) That the variance will not create special detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this ordinance or to the public interests; and
 - (d) That the difficulty or hardship was not created by the property owner.
 - (e) Negligence of a contractor in locating a setback, sideyard or building location shall not be considered a practical difficulty or a hardship.
 - (f) Personal characteristics, needs or desires of the lot owner shall not constitute a practical difficulty or hardship, except that a variance may be granted to permit installation of ramps, modification of driveways or garages or other physical alterations to a structure necessary to accommodate a disability.
 - (g) Where the action of an incorporated village or city has imposed a freeze on zoning, a use variance may be granted to permit the property owner to make reasonable and economic use of the property. Where the action of an incorporated village or city has imposed a freeze on uses, a use and/or area variance may be granted to permit the property owner to alter the extent of an

existing use to make reasonable and economic use of the property. The adoption of an extraterritorial zoning ordinance by a city or village shall be deemed to be an exceptional circumstance which is not attributable to the property owner.

(9) Recording and Transferability.

(a) Variances shall be recorded against the property for which they are granted.

(b) Approved variances run with the land and are not affected by changes of tenancy, ownership, or management.

(10) Amendments. A request for changes in conditions of approval of variance must be processed as a variance application, including the requirements for fees and notices.

(11) Lapse of Approval. An approved variance will lapse and have no further effect one year after it is approved by the board of zoning appeals, unless:

(a) a building permit has been issued (if required);

(b) the use or structure has been lawfully established; or

(c) unless a different lapse of approval period or point of expiration has been expressly established by the board of zoning appeals.

(12) Successive Applications. Once a variance request has been denied by the board of zoning appeals, no rehearing on the same or substantially similar variance application may be held except upon a simple majority vote of board members present and voting and a finding that substantial new evidence is submitted that could not reasonably have been presented at the previous hearing.

(13) Review by Court of Record.

(a) Any person aggrieved by the decision of the board of zoning appeals may present to the Dane County Circuit Court a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality.

(b) The petition shall be presented to the Court within 30 days after the filing of the decision in the office of the board of zoning appeals. The Board shall be made a party to the appeal.

(c) The record on appeal shall be limited to the evidence and information presented to the Board. The Zoning Administrator shall compile and certify the record, and forward it to the Court within 30 days of the filing of the appeal.

(d) The decision of the Board shall be reviewed under the certiorari procedure. The Court shall affirm the decision of the Board unless it appears to the Court that the decision is not supported by the record.

The amendment shall take effect upon its publication on the Town's website.

Dated July 10, 2023.

TOWN BOARD OF THE TOWN OF BLUE MOUNDS