



Variance
Town of Mukwonago

Version: December 23, 2020

Town of Mukwonago
W320 S8315 Beulah Road
Mukwonago, WI 53149

Overview: The Town of Mukwonago Zoning Board of Appeals is authorized to issue a variance that allows a property owner to deviate from one or more of the development requirements in the Town's zoning regulations. Variances are considered on a case-by-case basis and decisions of the board are based on the information provided in the petitioner's application and evidence and testimony received through the public hearing process. The law requires the existence of an unnecessary hardship, the presence of a unique property feature, and the protection of the public interest. The Board can only issue a variance if the evidence demonstrates that the requested variance meets each of these requirements.

Variances are not to be granted routinely. If the board determines that a variance should be granted, conditions may be imposed to protect adjoining property, to preserve the essential character of the neighborhood, and to ensure that the public welfare will not be damaged. A variance, if granted, should include only the minimum relief necessary to alleviate the hardship. Variances generally attach to the property as a permanent right. However, the board, where appropriate, may limit the duration of a variance.

Governing regulations: The procedures and standards governing the review of this application are found in Article 5 of the Town's zoning code (Chapter 36).

General instructions: Application materials should be submitted to the Town Clerk at the mailing address shown above or online at <https://townofmukwonago.zoninghub.com/tools/OnlineApplication.aspx>. If you have any questions, do not hesitate to contact the Town Planner at (262) 204-2350 or via email at ben.greenberg@cedarcorp.com

- 1. **Applicant and agent information** Include the names of the agent, if any, that helped prepare this application including the supplemental information. Examples include surveyors, engineers, landscape architects, architects, planners, and attorneys.

	<u>Applicant</u>	<u>Agent (if any)</u>
Name	_____	_____
Street address	_____	_____
City, state, zip code	_____	_____
Daytime telephone	_____	_____
Email address	_____	_____

2. **Subject property information**

Physical address _____

Tax key number(s) MUKT- MUKT- MUKT- MUKT-

Note: The tax key number can be found on the tax bill for the property or it may be obtained from the Town Clerk.

Is the subject property currently in violation of the Town's Zoning Code?

- No
- Yes

If yes, please explain.

Comment: Pursuant to Section 36-136 of the Town's zoning code, the Town may not issue a permit or other approval that would benefit a parcel of land that is in violation of the zoning code, except to correct the violation or as may be required by state law.

Are there any unpaid taxes, assessments, or other required payment that are specifically related to the subject property?

- No
- Yes

If yes, please explain.

Comment: Pursuant to Section 36-137 of the Town's zoning code, the Town may not issue a permit or other approval that would benefit a parcel of land where taxes, assessments, or other required payments are delinquent and due.

3. Zoning information

The subject property is located in the following zoning district(s). (check all that apply)

- | | | |
|--|---|--|
| <input type="checkbox"/> C-1 Conservancy | <input type="checkbox"/> R-1 Residential | <input type="checkbox"/> EC Environmental corridor (overlay) |
| <input type="checkbox"/> A-1 Agricultural | <input type="checkbox"/> R-2 Residential | <input type="checkbox"/> HS Hydric soils (overlay) |
| <input type="checkbox"/> RH Rural home | <input type="checkbox"/> B-2 Local business | |
| <input type="checkbox"/> SE Suburban estates | <input type="checkbox"/> P-1 Public | |

Is any portion of the subject property located within Waukesha County's shoreland zoning jurisdiction (generally defined as being within 300 feet of a stream or 1,000 feet of a lake)?

- No
 Yes

4. Previous variance applications for the subject property. Describe any variances applications that have been submitted for the property; include the year, a general description, and whether the application was approved or not.

5. Variance request. Provide the requested information for each variance that may be required. If you need any assistance determining what variances may be required you should seek counsel from an attorney, surveyor, consultant, or other professional who is familiar with the Town's zoning code.

Section Number of Zoning Code	Describe the requirement from that Section	Proposal
1.		
2.		
3.		
4.		

6. Proposed project. Describe what you would like to do (e.g., build a house, garage, fence) that cannot be done because of the section of the zoning code listed above.

7. Unnecessary hardship. Explain why you believe the section of the zoning code listed above creates a practical difficulty or is unreasonably burdensome in terms of severely limiting or prohibiting the reasonable use of the subject property as generally allowed under the Town's zoning code.

Comment: What constitutes unnecessary hardship is a matter to be determined from the facts and circumstances relating to the variance application being reviewed. In applying the statutory standards, the Board of Appeals must abide by the following court-established principles:

- a. Unnecessary hardship is a situation where compliance with the zoning code would unreasonably prevent use of the property for a permitted purpose, or would make conformity unreasonably burdensome, in light of the purpose of the ordinance. There are two alternative ways to satisfy this standard. The first consideration is whether compliance with the zoning code requirement would unreasonably prevent the owner from using the property for a permitted purpose, in light of the intent of the zoning ordinance provision at issue. The second alternative consideration is-whether compliance with the zoning code requirement would be unnecessarily burdensome, in light of the purpose of the zoning ordinance provision at issue.
- b. The hardship must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly. Generally, hardship arises because of some unique property limitation or feature (see question 8 below) of a parcel, or because the property was created before the passage of the zoning ordinance and is not economically suitable for a permitted use, or will not accommodate a structure of reasonable design for a permitted use, if all area, yard, and setback requirements are observed.
- c. Loss of profit or pecuniary (financial) hardship and/or additional expense incurred to comply with the zoning code is not in and of itself sufficient grounds for a variance.
- d. A self-imposed hardship is not grounds for a variance. Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, or deed restrictions imposed by the owner or the owner's predecessor in title are examples of self-imposed hardships.
- e. The hardship cannot be one that would have existed in the absence of a zoning ordinance. Some properties may not be buildable because of the physical nature of the property. For example, the entire parcel might consist of steep slopes or wetlands. In such cases, the property would not be suitable for development whether or not there was a zoning ordinance regulating development. In such extreme cases, the only reasonable use may be for open space uses.

8. Unique property limitations. Explain why you believe the hardship is due to unique or special conditions or limitations affecting the subject property and/or structure that are not typical or generally shared by other surrounding properties.

Comment: Unique physical characteristics or limitations of the property, not the desires of or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Existing violations on other properties, or proper or improper variances previously granted, are not grounds for a variance.

9. Public interest. Explain why you believe the variance, if granted, would not be contrary to the public interest by creating or having the potential for creating an adverse impact on the public, health, safety, or welfare of adjoining and surrounding residents, properties or the community.

Comment: Granting of a variance must not harm the public interest. The Board's actions must reflect the objectives stated in the zoning code. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of local opposition does not in itself mean that a variance will not harm the public interest.

10. Project map. Attach a project map. It can consist of a single page or multiple pages depending on the complexity of the features that need to be depicted.

The following items need to be included as appropriate to the project.

Background Project Information

- Project name
- Applicant name
- Preparation date

Survey Information

- North arrow and graphic scale
- Address of subject property or legal description
- Property boundaries
- Acreage of subject property

Project Development Information

- Easements/rights-of-ways (location, width, purpose, ownership)

Setting

- Property boundaries within 50 feet of the subject property
- Land uses within 50 feet of the subject property
- Zoning district boundaries within 50 feet of the subject property
- Municipal boundaries within 50 feet of the subject property

Site Features (existing and proposed)

- Ground contours when any slope exceeds 10 percent
- Wetlands
- Woodlands
- Wildlife habitat, including critical wildlife habitat
- Environmentally sensitive features
- Water resources (rivers, ponds, etc.)
- Floodplain boundaries
- Environmental and manmade development constraints and hazards including brownfields, contaminated sites, unstable soils, high groundwater, bedrock, and high-pressure natural gas lines

Buildings and Outdoor Storage/Activity Areas

- Existing and proposed
- Existing within 50 feet of subject property

Required Setbacks

- Yard setbacks (front, side, rear and shore)
- On-site septic systems
- On-site wells and off-site wells within 10 feet of the perimeter of the subject property

Utilities (existing and proposed)

- Location
- Type (sewer, telephone, etc.) (buried or overhead, if applicable)

Transportation Facilities (existing and proposed)

- Streets
- Driveways and road access onto public and private roads
- Parking lots
- Sidewalks / trails
- Fire lanes (i.e., fire apparatus access)
- Clear visibility triangles (location and dimensions)

11. **Attachments.** List any attachments included with your application.

12. **Other information.** You may provide any other information you feel is relevant to the review of your application.

13. **Applicant certification**

- ***I understand that I, or any of my agents, may not discuss this variance application with any member of the Town of Mukwonago Board of Appeals until after the board renders a final written decision.***
- I certify that all of the information in this application, along with any attachments, are true and correct to the best of my knowledge and belief.
- I understand that I may be charged additional fees (above and beyond the initial application fee) consistent with sections 2-2 and 2-3 of the Town of Mukwonago municipal code.
- I understand that submission of this application authorizes town officials, Board of Appeals members, employees, and other designated agents to enter the property to conduct whatever site investigations are necessary to review this application. This does not authorize any such individual to enter any building on the subject property, unless such inspection is specifically related to the review of this application and the property owner gives his or her permission to do so.
- I understand that this application and any written materials relating to this application will become a permanent public record and that by submitting this application I acknowledge that I have no right to confidentiality. Any person has the right to obtain copies of such written materials or view it online.
- I understand that the Town Planner will review this application to determine if it contains all of the required information. If he or she determines that the application is incomplete, it will not be scheduled for review until it is deemed to be complete.

Property Owner Signature(s):

Date:
