



Board of Appeals

Regular Meeting

335 South Broadway
De Pere, WI 54115
<https://www.deperewi.gov/>

Agenda

Monday, January 23, 2023

4:45 PM

Council Chambers and Virtual

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **Board of Appeals** of the City of De Pere will be held on **January 23, 2023** at **4:45 PM** in the **COUNCIL CHAMBERS, 2ND FLOOR CITY HALL, 335 S. BROADWAY STREET, DE PERE.**

The public may attend the meeting either in person in the Council Chambers or electronically/telephonically. Electronic or telephonic access to the meeting is provided below:

Computer/smart phone accessing <https://www.gotomeet.me/DePere>

OR

You can also dial in using your phone.
United States (Toll Free): [1 866 899 4679](tel:18668994679)
United States: [+1 \(312\) 757-3117](tel:+13127573117)
Access Code: 154-883-285

This meeting may also be rebroadcast on Spectrum Cable Channel 4 and AT&T U-verse Channel 99 throughout the week and available on demand at <http://depercitywi.igmp2.com/>.

Call to Order

1. Roll Call
2. Approval of the minutes of the February 28, 2022 Board of Appeals meeting.
3. Public comments upon matters not on the agenda. Comments made during the public comment period shall pertain only to matters under the jurisdiction of the Board of Appeals. §6-3(f) DPMC
4. Discussion to introduce the new City Attorney, Tony Wachewicz, to the Board of Appeals.
5. Discussion and refresher training for the review of variances and the role of the Zoning Board of Appeals.
6. Discussion about the new Zoning Ordinance as it relates to the Board of Appeals.

Adjournment

Any person wishing to attend this meeting, who, because of disability, requires special accommodations should contact the City Planner's office at 339-4043 by noon on the day of the meeting so that arrangements can be made.

*Items with an asterisk require City Council approval.

Agenda Sent To:

Alderspersons
City Administrator
Mayor
Department Heads
TV, Newspapers & Radio Stations

Kress Family Library
De Pere Chamber of Commerce



City of De Pere, Wisconsin

Request For Board of Appeals Action

MEETING DATE: January 23, 2023

DEPARTMENT: Planning

FROM: Kelly Barker

SUBJECT: Approval of the minutes of the February 28, 2022 Board of Appeals meeting.

ATTACHMENTS:

- BoA_Feb2022_Minutes_Draft (PDF)



Board of Appeals

335 South Broadway
De Pere, WI 54115
<https://www.deperewi.gov/>

Regular Meeting

Draft Minutes

Monday, February 28, 2022

4:45 PM

Council Chambers and Virtual

Call to Order

The meeting was called to order at 4:45 PM by Chairman Bob De Groot

Attendee Name	Title	Status	Arrived
Scott Bonfigt	Board Member	Present	
Bob De Groot	Chairman	Present	
Michelle Manke	Board Member	Present	
James Stadler	Board Member	Present	
William Vande Hei	Board Member	Present	
Andy Van Remortel	Board Member	Present	

Also present: Development Services Director Daniel Lindstrom, City Planner Peter Schlein, City Attorney Judy Schmidt-Lehman, Senior Building Inspector Dennis Jensen, and Building Inspector Chelsea Myers.

- Approval of the minutes of the January 24, 2022 Board of Appeals meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Andy Van Remortel, Board Member
SECONDER:	Scott Bonfigt, Board Member
AYES:	Bonfigt, De Groot, Manke, Stadler, Vande Hei, Van Remortel

- Public comments upon matters not on the agenda. Comments made during the public comment period shall pertain only to matters under the jurisdiction of the Board of Appeals. §6-3(f) DPMC

There were no public comments.

RESULT:	DISCUSSED
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- Discussion about training for the review of variances and the role of the Zoning Board of Appeals.

City Planner Peter Schlein stated that tonight's meeting will involve the review of two training videos and a question & answer session. He mentioned that the video may discuss shoreline zoning, which does not typically pertain to the De Pere Board of Appeals. The first video introduced the role of the zoning board and discussed the three types of zoning board decisions: variances, conditional uses/special exceptions, and administrative appeals.

The second video defined & explained variances, including area variances and use variances. The applicant has the burden of proof to show that all three variance standards are met. They are:

- Unnecessary Hardship.
- Due to circumstances unique to the property, and
- No harm to public interests

After reviewing the videos, Peter invited the board members to ask any questions they had. Bill Vande Hei questioned whether staff would be able to designate whether a specific part of the City (ie, the older part of De Pere) is grandfathered into automatically allowing variances because those parcels are substandard size lots. Development Services Director Daniel Lindstrom explained that the City is attempting to address this

by recognizing the differences and making changes in the zoning code, which is in the process of being rewritten. However, in the meantime, the board needs to follow the variance standards and base their decisions on whether a hardship exists. In a lot of these examples, the homeowner voluntarily removes the non-conforming use, which then brings the home into non-conformance and creates the need for a variance. By re-writing the current zoning code, which is decades old, the mechanism is created for allowing flexibility in the older neighborhoods by allowing their own zoning districts. Michell Manke asked what the process is for changing the zoning code. City Planner Peter Schleinz replied that the board could include a recommendation to staff that a zoning change occur, which would then be presented to Plan Commission and the Common Council for formal approval. Scott Bonfigt thanked staff for providing the training. He added that is was well-needed training that will help him make better decisions in the future. Andy Van Remortel asked for clarification on the variance process. Peter explained that the process starts with the denial of a building permit, followed by submittal of the variance application by the petitioner. Before it goes to the board of appeals, staff first tries to find alternatives for the petitioner. If the petitioner still decides to apply for a variance, that is their right, even if they do not have a strong burden of hardship to prove. Michelle Manke asked if it would be appropriate for the board to make a recommendation while the zoning code is being re-written, or to wait until the changes have been instituted. Development Services Director Daniel Lindstrom suggested that the board wait until the public comment period during which time they can go over the changes with staff and review them. Peter noted that he is revamping the variance application by changing it from a single page to a three page application, and requesting more information from the petitioner.

RESULT:	DISCUSSED
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Adjournment

Jim Stadler moved, seconded by Andy Van Remortel, to adjourn the meeting at 5:35 pm. Upon vote, motion carried unanimously.

Respectfully submitted,
Kelly Barker



City of De Pere, Wisconsin

Request For Board of Appeals Action

MEETING DATE: January 23, 2023

DEPARTMENT: Planning

FROM: Kelly Barker

SUBJECT: Public comments upon matters not on the agenda. Comments made during the public comment period shall pertain only to matters under the jurisdiction of the Board of Appeals. §6-3(f) DPMC



City of De Pere, Wisconsin

Request For Board of Appeals Action

MEETING DATE: January 23, 2023

DEPARTMENT: Planning

FROM: Peter Schlein

SUBJECT: Discussion to introduce the new City Attorney, Tony Wachewicz, to the Board of Appeals.



City of De Pere, Wisconsin

Request For Board of Appeals Action

MEETING DATE: January 23, 2023

DEPARTMENT: Planning

FROM: Peter Schlein

SUBJECT: Discussion and refresher training for the review of variances and the role of the Zoning Board of Appeals.

ATTACHMENTS:

- BOA Training Memo - 23 Jan 2023 (DOCX)
- Role of the Zoning Board - Slides Only (DOCX)
- Variances for Zoning Boards - Slides Only (DOCX)

CITY OF DE PERE MEMO



To: Zoning Board of Appeals Members
 From: Peter Schlein, Senior Planner | Zoning Administrator
 Date: January 23, 2023

RE: **Discussion and refresher training for the review of variances and the role of the Zoning Board of Appeals.**

Summary:

In February 2022 staff and the Board of Appeals participated in refresher training sessions to further improve the effectiveness, integrity, and efficiency of the Board of Appeals. To maintain the Board of Appeals effectiveness of the training on an annual basis, staff will again present the two videos that are available on YouTube from the Wisconsin Center for Land Use Education (UW-Stevens Point) and UW Extension (UW-Madison).

- The first video is titled, *“Role of the Zoning Board.”* The video describes the following:
 - Terminology for a Board of Appeals.
 - The role/function of a Board of Appeals: must follow and apply (as written) the state statutes, published case law, and local zoning ordinance.
 - Appealing to higher courts: Board of Appeals, Circuit Court, court of appeals, Wisconsin Supreme Court.
 - Why Board of Appeals decisions matter (the impact of a decision).
 - Local levels of decisions: Plan Commission/Council, Board of Appeals, staff.
 - Variance examples for a group discussion after the video.
 - VIDEO LINK: <https://www.youtube.com/watch?v=qXRfgznW-AY>
- The second video is titled, *“Variances for Zoning Boards.”* The video describes the following:
 - ‘Area variances’ and ‘use variances.’
 - An applicant’s burden of proof that must be provided to the Board of Appeals that meet all three variance standards: unnecessary hardship, due to conditions that are unique to the property, and no harm to public interests.
 - Example scenarios for a group discussion after the video.
 - VIDEO LINK: https://www.youtube.com/watch?v=r_HcyUAlmuo

Staff Request:

Review each video during the January Board of Appeals meeting. Discuss the information while asking questions of staff and each other afterward.

Role of the Zoning Board



Lynn Markham
Center for Land Use Education
UW-Stevens Point & Extension



Terminology

Wisconsin statutes define:

- Counties (and towns) have boards of adjustment
Wis. Stat. s. 59.694, stats. for counties, s. 60.65 for towns
- Cities, villages (and towns) have boards of appeal
Wis. Stat. s. 62.23(7)(e), stats. for cities, s. 61.35 for villages,
s. 60.62 for towns with village powers

Both are commonly referred to as:

- Zoning Board
- BOA
- Different from the 'zoning committee'


The zoning board functions like a court

- 1) Zoning boards must follow:
 - state statutes
 - case law
 - local zoning ordinances
- 2) Zoning boards apply these laws to particular fact situations to make *quasi-judicial* decisions
- 3) Must apply the laws as written

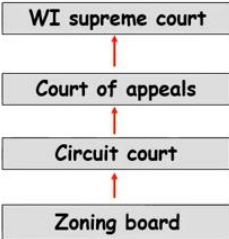


If you want to change the law/ordinance, run for office

The zoning board functions like a court



- Like a court, zoning board decisions can be appealed to higher courts
- If the zoning board followed state statutes and case law, their decisions will generally be upheld
- A solid legal record minimizes legal costs and zoning board reconsideration




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graph BT
    ZoningBoard[Zoning board] --> CircuitCourt[Circuit court]
    CircuitCourt --> CourtOfAppeals[Court of appeals]
    CourtOfAppeals --> WISupremeCourt[WI supreme court]
  
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Zoning Board Decisions

1. **Variations** – allow landowners to do things prohibited by the zoning ordinance.
2. **Conditional uses/Special exceptions** – land uses allowed under a conditional use or special exception permit, not including variations.
3. **Administrative appeals** – contested decisions of administrative officials.

Why do zoning board decisions matter?




- If the **purposes** of a zoning ordinance are held in a bucket, and variations are granted that don't meet the legal standards, the purposes of the ordinance (water) leak out and are lost.



Why do zoning board decisions matter?

General zoning



Purposes for roadway setbacks

- **Safety**
- Accommodate road widening & utility replacement

Granting variances reduces these purposes



Why do zoning board decisions matter?

Shoreland zoning



Purposes for lake setbacks

- Reserve shoreline trees
- Prevent water pollution
- **Protect fish** and spawning grounds

Granting variances reduces protection of lakes and streams



Why do zoning board decisions matter?

Shoreland zoning



Purposes for lake setbacks

- Reserve shoreline trees
- Prevent water pollution
- **Protect fish** and spawning grounds


Granting variances reduces protection of lakes and streams

Joe wants to build his home 20 feet from the lake. This is not allowed, so he applies for a variance. Many people would like to build close to the lake.

How should the zoning board react to this information...

?

Hint: What would a judge do?



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715-346-3879




Center for Land Use Education
College of Natural Resources
University of Wisconsin-Stevens Point



Extension
UNIVERSITY OF WISCONSIN-MADISON

Variances for zoning boards



Lynn Markham
Center for Land Use Education
UW-Stevens Point/Extension


Center for Land Use Education
College of Natural Resources
University of Wisconsin-Stevens Point

Extension
UNIVERSITY OF WISCONSIN-MADISON

0:03 / 10:30

Variances

Allow a property owner to do something prohibited by the zoning ordinance



- Variances prevent regulatory takings and provide an escape valve
- Variances are not meant to provide general flexibility in ordinances
- Elected officials may revise the zoning ordinance to incorporate the level of flexibility the community supports.

For more information about variances,
see Chapter 15 of the *Zoning Board Handbook*

0:30 / 10:30

Variances

Area variances “provide an increment of relief (normally small) from a physical dimensional restriction such as a building height, setback, and so forth.”

Use variances “permit a landowner to put property to an otherwise prohibited use.”
Prohibited in shoreland zoning.

Ziervogel v. Washington County Board of Adjustment, 200 WI 21

1:40 / 10:30

Variance standards

The applicant has burden of proving all three standards are met

Zoning board should not be providing applicants with reasons standards are met

1. unnecessary hardship
2. due to conditions unique to the property, and
3. no harm to public interests

For floodplain variances, the applicant must show they meet an additional 13 standards.
(see Floodplain Variance Decision Form)

AREA VARIANCE APPLICATION

3 The BOA may only grant a variance if the applicant provides evidence that they meet all three legal standards below.

1 1. **Unnecessary hardship** is present when, ordinance standards that are strictly applied would unreasonably prevent a permitted use of a property, or render conformity with such standards unnecessarily burdensome. Circumstances of an applicant, such as a growing family or desire for a larger garage are not legitimate factors in deciding variances. A personal inconvenience is not sufficient to meet the unnecessary hardship standard. (*Snyder v. Waukesha County Zoning Bd. Of Adjustment*, 1976).

The literal enforcement of the ordinance standard(s) **(will / will not)** result in an unnecessary hardship because...

2 2. **The hardship must be due to unique property limitations** such as steep slopes or wetlands that prevent compliance with the ordinance, and that are not shared by nearby properties. Further, the entire property must be considered, if a code-compliant location(s) exists, a hardship due to unique property limitations **does not exist**.


The hardship **(is / is not)** due to unique conditions of the property because...

Variances

Conditions unique to the property

Conditions unique to the property such as steep slopes or wetlands must prevent compliance with the ordinance


Does every small, steep or irregularly shaped property qualify for a variance??



Variances

Conditions unique to the property


- Circumstances of an applicant such as a growing family or need for a larger garage, are not a factor in deciding variances



4:17 / 10:30

Variances

Public interests




- A variance granted may not harm public interests
- “Public interests” are the purpose and intent of the ordinance that were adopted by the elected officials representing the community
- Consider listing ordinance purposes on your community’s variance application form and variance decision form
- Short-term, long-term and cumulative impacts of variance requests must be considered. Zoning staff can provide an impact analysis.

4:51 / 10:30

Variances

Unnecessary hardship for area variances

- Unnecessary hardship = when compliance with the ordinance would:
 - unreasonably prevent the owner from using the property for a permitted purpose, or
 - be **unnecessarily burdensome** in view of ordinance purposes

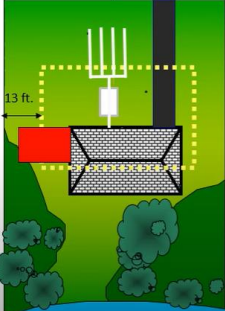


5:41 / 10:30

Ziervogel v. Washington County Board of Adjustment, 2014-01-17

Variances

Unnecessary hardship for area variances

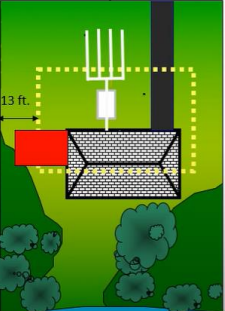


- Should an after-the-fact variance be granted for the red porch because removing it would be an unnecessary hardship?
- The WI Supreme Court said NO because the “hardship was self-created and the porch **no more than a personal convenience**”.

Snyder v. Waukesha County Zoning Board, 1976

Variances

Unnecessary hardship for area variances



- “Growth of a family and personal inconvenience do not constitute practical difficulties or unnecessary hardship which justify a variance. It is not the uniqueness of the plight of the owner, but uniqueness of the land which is the criterion”.

Snyder v. Waukesha County Zoning Board, 1976

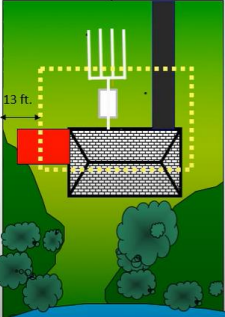
Variance case law

- Self-created hardship: an applicant may not claim hardship because of conditions created by his or her actions
- Loss of profit or financial difficulty do not constitute hardship
- A zoning board may consider an error of local government staff when deciding whether to grant a variance
- Lack of objections from neighbors does not justify a variance
- Nor do nearby ordinance violations
- A variance runs with the property to all future property owners

7:53 / 10:30

Variances

Unnecessary hardship for area variances



Owner said not having a porch would be an unnecessary hardship because:

1. the porch, substantial, have to be removed
2. the lot is substandard
3. the porch could not be on all sides of the home
4. owner needs the porch for his family including children
5. porch would add to the value of the house

Self-created hardships don't count

Treated the same as other substandard lots

Porch may not be feasible at all on this property

Hardship is based on property, not applicant

Snyder v. Waukesha County Zoning Board, 1976

What is an unnecessary hardship?

Possibilities:

- Homes that would require a variance to add their first indoor bathroom
- Lots that are zoned residential, but setbacks do not leave room for a small home
 - Stronger case for hardship if a driveway or septic permit was already granted



Variances

A variance can only be granted if an **applicant** has shown that **all three standards** are met:

1. unnecessary hardship
2. due to conditions unique to the property and
3. no harm to public interests

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City of De Pere, Wisconsin

Request For Board of Appeals Action

MEETING DATE: January 23, 2023

DEPARTMENT: Planning

FROM: Peter Schlein

SUBJECT: Discussion about the new Zoning Ordinance as it relates to the Board of Appeals.
