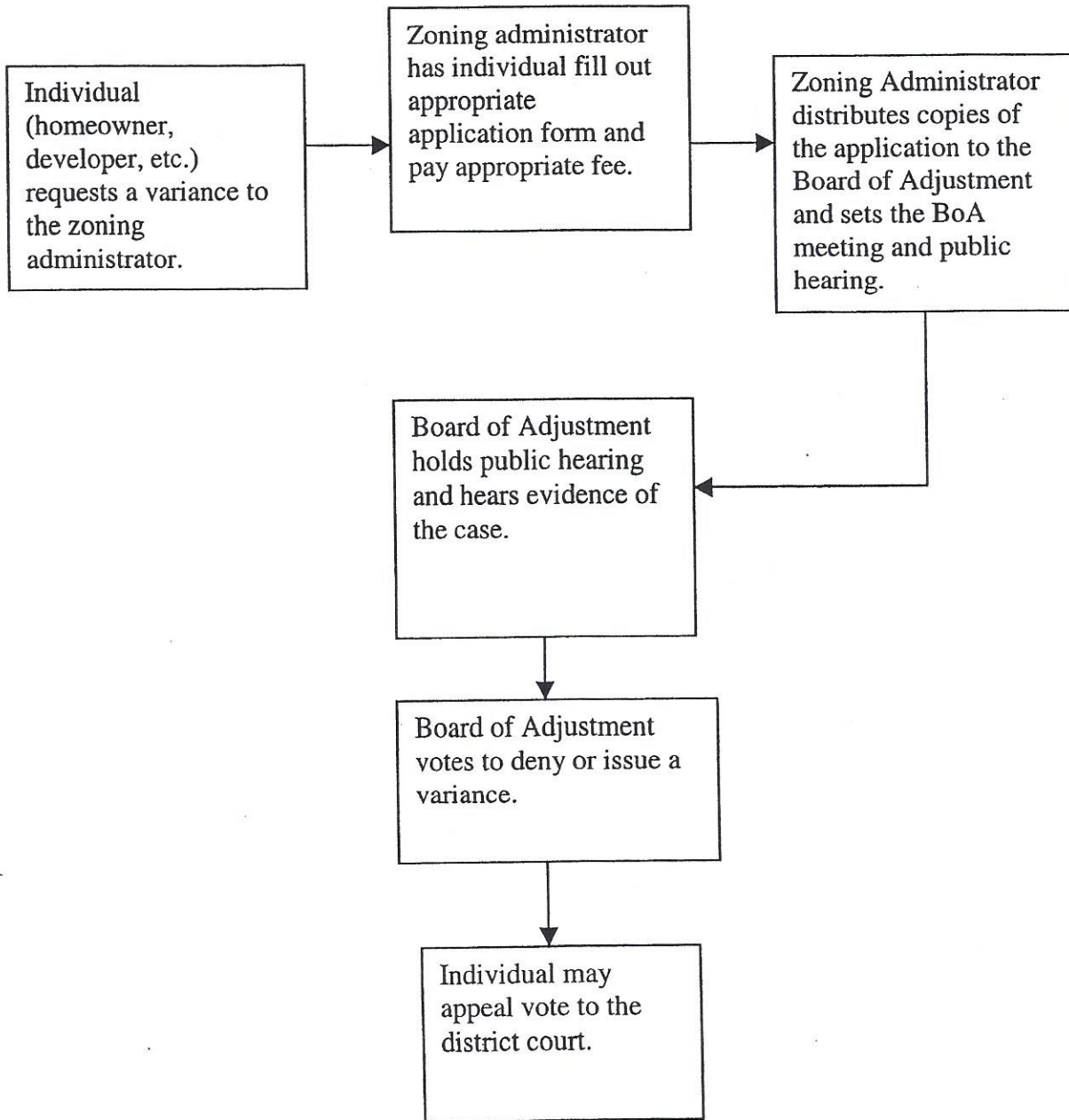


City of Shueyville - Board of Adjustment Flow Chart Variance Request



Fee \$100.⁰⁰

Variance Standards of Review

Since the BOA is a quasi-judicial body, it is required by law to apply the standards for a variance that have been established by court cases. The BOA is not a policy-making body and therefore does not have the same discretionary authority. Its decisions are not precedent setting.

Variance Granting Criteria

Please respond to the following criteria established by case law for granting a variance: (please attach additional sheets if necessary)

1. Describe why you feel there is "unnecessary hardship", which is defined as complying with the petitioned ordinance standard would unreasonably prevent you from using the property for a permitted use or would render conformity with such restrictions unnecessarily burdensome.

2. Describe what unique property limitations exist that prevent ordinance compliance and are not common to adjacent properties.

3. Describe how you consider the hardship under both items above is not self-created.

4. Describe how you feel the granting of this variance would not harm public interests as you consider the general purpose of the ordinance and the specific provision being petitioned.

Guiding Principles to Grant Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

Parcel-as-a-whole. The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County*, 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

Self-imposed hardship. An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

Circumstances of applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

Financial hardship. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

Nearby violations. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

Objections from neighbors. The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

Variance to meet code. Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)

Variances

- A variance is an authorization to use property in a manner generally forbidden by the ordinance.
- A variance can only be granted if the landowner proves that an unnecessary hardship will result if the zoning regulations are enforced. The intent is to prevent the property from being "worthless as zoned."

Unnecessary Hardship Means...(all four points must be met)

- 1) Land in question cannot yield **reasonable return** if used only for purpose allowed in that zone;
- 2) Plight of owner is due to **unique circumstances** and not general conditions in the neighborhood;
- 3) The hardship must not have been **self-created**; and
- 4) Use to be authorized by variance will not alter **essential character** of locality.

- Greenawalt v. City of Davenport BOA (Iowa 1984)

#1 "Reasonable Return"

- Not sufficient to show that the value of land will be depreciated by application of the ordinance
- Not sufficient to show mere inconvenience to landowner
- Not sufficient to show that the regulation deprives landowner of "highest and best use"

Lack of a "reasonable return" may be shown by proof that the owner has been deprived of **all** beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.

- Greenawalt v. City of Davenport BOA (Iowa 1984)

#2 "Unique Circumstances"

- A variance is not proper when the problem is common to a number of properties in the neighborhood.
 - Small lots, narrow setbacks, etc.

Problems common to several properties do not constitute "unique circumstances" (i.e. severe slope affecting numerous neighboring properties). The appropriate response is through a zoning amendment, not a wholesale application of the discretionary power of the board of adjustment.

- Deardorf v. City of Fort Dodge BOA (Iowa 1962)

#3 "Self-created"

- Problem must not have been created by current landowner
 - Building up to side setback, then wanting to add a deck
- When property is purchased, the new owner assumes any liability created by previous landowner
 - Previous owner built up to the side setback, current owner wants to add a deck

#4 "Essential Character"

- Cannot grant variance if it will have detrimental effect on surrounding properties.
- Cannot grant a variance that essentially constitutes a rezoning.

Variance Rule of Thumb

- The Ordinance is the law of the city.
- A variance should prevent a hardship, not grant a special privilege not available to other landowners in similar situations.
- There are alternatives!
 - Re-examine policy in which variances have been consistently approved
 - Is there a justification for it? If not, change the ordinance.

"The power to grant a variance should be exercised sparingly and with great caution or in exceptional instances only."

- Deardorf v. City of Fort Dodge BOA (Iowa 1962)