Variance Application Packet

NOTICE – PLEASE READ: The Village of Fontana Board of Zoning Appeals has limited discretion when it comes to reviewing variance applications. Their legal authority to approve such variance applications is specifically limited by State law.

You, the applicant, must prove that the property has a unique condition that is causing an "unnecessary hardship". These terms are defined by State law.

If you fail to prove both a unique property condition and an unnecessary hardship, then the Board of Zoning Appeals is not allowed to approve a variance.

The Board of Zoning Appeals is a quasi-judicial body, and the hearing before it is a legal proceeding. The Village of Fontana cannot give you legal advice. If you have legal questions about this legal proceeding, you are encouraged to consult with an attorney.

To repeat, you, as the applicant, have the sole responsibility and burden of proof when it comes to your variance application. Failure to meet your burden of proof may result in your application being denied. A copy of Wisconsin Statute 62.23(7)(e) is attached for your reference.

Process

At the time of application you will be asked to:

1. **Complete an application** form and submit a $_____ fee;
2. **Provide detailed plans** describing your lot and project (location, dimensions and materials);
3. **Provide a written statement** of verifiable facts showing that your project meets the legal criteria for a variance; and
4. **Stake out lot corners or lines**, the proposed building footprint and all other features of your property related to your request so that the zoning board may inspect the site.

Following these steps, the Village will publish notice of your request for a variance in the county's official newspaper noting the location and time of the required public hearing before the zoning board. Your neighbors and any affected state agency will also be notified. The burden will be on you as property owner to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. The board must make its decision based only on the evidence submitted to it at the time of hearing. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and must then deny your application.

Variance Application

Village of Fontana Zoning Board of Adjustment/Appeals

Part 1: General information
To be completed jointly by the applicant and zoning staff.

Petition # Date filed _____ ☐ $____ fee paid (payable to _____)

	Owner	Agent/Contractor
Name		
Address		
Phone		

Legal description: ____1/4, ____1/4, S ____, T ____ N, R ____ E
City/Village/Town of _____
Property Address _____ Tax parcel number _____
Lot area & dimensions: _____ sq. ft., _____ x _____ ft.
Zoning district _____

Current use & improvements:

Description of any prior petition for appeal, variance or conditional use:

Description and location of all nonconforming structures & uses on the property:

Ordinance standard(s) from which variance is being sought (section number(s) and text):

Describe the variance requested:

Describe the effects on the property if the variance is not granted:

Part 2: Variance Standards Questionnaire

1. What exceptional or extraordinary circumstances or special factors are present which apply only to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district. Specifically:

   a. The hardship or difficulty shall be peculiar to the subject property and different from that of other properties, and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel; unusual topography or elevation; or because the property was created before the passage of the current, applicable zoning regulations, 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, green space, and setback requirements are observed.

   b. Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance.

   c. Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property reducing the remainder of said property below buildable size or cutting off existing access to a public right-of-way or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships.

   d. Violations by, or variances granted to, neighboring properties shall not justify a variance.

   e. The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)

2. In what manner do the factors identified in subsection (1), above, prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

3. Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.

4. Would the granting of the proposed variance as depicted on the required site plan, result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions, and policies of this chapter, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the village or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.

5. Have the factors which present the reason for the proposed variance been created by the act of the application or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan, or orientation, lot pattern, or grading) after the effective date of this chapter. The response to this question shall clearly indicate that such factors existed prior to the effective date of this chapter and were not created by action of the applicant, a previous property owner, or their agent.

Part 3: Site and Construction Plans
To be completed and submitted by the applicant.

Attach a site plan drawn to scale. A registered survey is recommended, but not required. Show the following:

- ❑ Property lines
- ❑ Vegetation removal proposed
- ❑ Ordinary high water mark
- ❑ Floodplain & wetland boundaries
- ❑ Dimensions, locations & setbacks of existing & proposed structures
- ❑ Utilities, roadways & easements
- ❑ Location & extent of filling/grading
- ❑ Any other construction related to your request
- ❑ Anticipated project start date

Attach construction plans.

- ❑ Elevations from all relevant directions showing existing and proposed views, with notation showing the existing structure and proposed addition(s).
- ❑ Interior floor plans of existing and proposed structures.

I certify that the information I have provided in this application is true and accurate.

Signed: (applicant/agent/owner) _____
Date: _____

Remit to: Zoning Administrator
Village of Fontana
175 Valley View Drive
P.O. Box 200
Fontana, WI 53125

VILLAGE OF FONTANA-ON-GENEVA LAKE
175 Valley View Drive · P.O. Box 200
Fontana, Wisconsin 53125
Phone: 262 275-6136
Fax: 262 275-8088
vi.fontana.wi.gov

Cost Recovery Certificate and Agreement

Pursuant to Ordinance 10-6-97-1 and Section 18-236 of the Village of Fontana Municipal Code

The undersigned applicant hereby acknowledges and agrees to be bound by Ordinance 10-6-97-1 as codified at Section 18-236 of the Village of Fontana Municipal Code, providing for village recovery of all village costs and disbursements incurred directly or indirectly related to the Applicant's request. All costs incurred by the village in the consideration of any requests by the Applicant related to the Applicant's request shall be recoverable, including, but not limited to, all professional and technical consultant services and fees retained by the village and rendered in review of any application, including the engineer, planner, attorney, or any other professional or expert hired by the village for purposes of review of the application or pre-submission request. The Applicant agrees to reimburse the Village for all costs recoverable pursuant to the terms of the above numbered ordinance within the time period set forth in the Village of Fontana Municipal Code. At no time shall any cost recoverable fees be waived, except through the process of a written request by the Applicant to the Village Board, review and evaluation by the Village Board, and official action taken by the Village Board.

PROJECT INFORMATION

PROJECT NAME _____

PROJECT ADDRESS _____

APPLICANT INFORMATION

NAME: _____

MAILING (BILLING) ADDRESS: _____

PHONE: _____

EMAIL: _____

ATTORNEY INFORMATION

NAME: _____

PHONE: _____

EMAIL: _____

SIGNATURE OF APPLICANT: _____

SIGNATURE OF PROPERTY OWNER: _____

Dated this _____ day of _____ , _____

Note to Applicant:
The Village Engineer, Attorney and other Village professionals and staff, if requested by the Village to review your request, will bill for their time at an hourly rate which is adjusted from time to time by agreement with the Village. Please inquire as to the current hourly rate you can expect for this work. In addition to these rates, you will be asked to reimburse the Village for those additional costs set forth in Section 18-236 of the Municipal Code.

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.

2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.

3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the 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.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.

7.

a. In this subdivision, " area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the

enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, 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 a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. 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.

e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

f. A variance granted under this subdivision runs with the land.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.