October 2010

COUNTY OF KENOSHA

Department of Planning and Development

George E. Melcher, Director

VARIANCE PROCEDURES
BEFORE THE BOARD OF ADJUSTMENTS

- ❑ **1.** Contact the Department of Planning & Development and set an appointment. Bring the following for your pre-application meeting.

- ❑ **2.** Complete a Zoning Permit Application at the Department of Planning & Development.

- ❑ **3.** Complete a Variance Application.

  - ❑ **A.** A copy of your Tax Bill or a copy of the recorded Deed of Transfer if you have owned the property for less than a month. (This is to provide proof of ownership) If you are in the process of purchasing the property you need to provide a signed and accepted purchase agreement or if you are a realtor or contractor, a letter from the current owner granting you agent status to act on their behalf.

  - ❑ **B.** A Survey of the property with the following information provided. **NOTE:** The Board of Adjustments strongly advises that for any new residential construction an area for a detached or attached garage should be shown for present or future construction.

    - ❑ ✤ Size and location of all existing structures on the property and their distances from property lines -- (street yard setback should be taken from the edge of the road right of way).
    - ❑ ✤ Location and dimensions of the proposed structure(s) or where the addition is to be placed on an existing structure.
    - ❑ ✤ Show what the resulting setbacks will be for proposed structure.
    - ❑ ✤ Location of the well and on-site waste disposal system -- (septic systems must show both the septic tank size and dimensions of the field).

  - ❑ **C.** A filing fee of $550 (non-refundable) is required at application time to cover the costs of publishing.

- ❑ **4.** Submit the above information by the filing deadline (see Board of Adjustment Schedule handout) with the Department of Planning and Development.

- ❑ **5.** Submit the above information to your local Township for placement on the agenda of the Town Planning Commission and/or the Town Board.

- ❑ **6.** Your first meeting will be with the Town Planning Commission, except for the Town of Wheatland. The Town of Somers has a Board of Appeals. **NOTE:** You must attend or the Commission/Board will not be able to act on your request.

☐ **7.** Your second meeting will be with the Town Board. **NOTE:** You must attend or the Board will not be able to act on your request.

☐ **8.** Your third meeting will be with the County Board of Adjustments. **NOTE:** You must attend or the Board of Adjustments will not be able to act on your request. At this meeting you will be asked to brief the Board on your request for a variance and state your reasons for hardship (see Public Hearing Variance Standards handout).

☐ **9.** If the Board of Adjustments grants your variance request you may obtain your Zoning Permit from the Office of Planning and Development the day after the meeting. The permit will be issued if all requirements from this office have been addressed, including sanitation, if you are the current owner of the property, and subject to signing the Statement of Appeal Process (see attached handout). If you do not sign the Statement of Appeal Process you will need to wait 30 days from the date of approval before the zoning permit can be issued. PLEASE NOTE, THAT ACCORDING TO SECTION VII.B.12.36-15(c) VARIANCES GRANTED BY THE B.O.A. SHALL EXPIRE WITHIN SIX (6) MONTHS FROM THE DATE OF APPROVAL, UNLESS A ZONING PERMIT HAS BEEN ISSUED AND "SUBSTANTIAL CONSTRUCTION" – THE VALUE OF SUCH WORK THAT HAS COMMENDED EQUIVALENT TO 25% OF THE PROJECTED COST OF THE PROJECT AS NOTED ON THE APPLICATION FOR THE ZONING PERMIT, HAS COMMENCED.

☐ **10.** Follow the Permitting Process for New Construction or for Additions to Existing Structures, Accessory Structures, Decks, Pools, and/or Fences (see handout).

☐ **11.** If the Board of Adjustments denies your variance you have thirty (30) days to file an appeal with circuit court (see Statement of Appeal Process handout).

IMPORTANT TELEPHONE NUMBERS

Kenosha County Center
Department of Planning & Development
19600 - 75th Street, Post Office Box 520
Bristol, Wisconsin 53104-0520

Division of County Development (including Sanitation & Land Conservation) **857-1895**
Facsimile #..... 857-1920

Public Works Division of Highways..... 857-1870

Administration Building
Division of Land Information 653-2622

Brighton, Town of..... 878-2218
Paris, Town of 859-3006
Randall, Town of 877-2165
Salem, Town of 843-2313
Utility District 862-2371
Somers Town of..... 859-2822
Wheatland, Town of 537-4340
Wisconsin Department of Natural Resources - Sturtevant Office 884-2300
Wisconsin Department of Transportation - Waukesha Office 548-8722

PUBLIC HEARING VARIANCE STANDARDS

- YOUR PUBLIC HEARING WILL BE BASED ON THE FOLLOWING STANDARDS FROM THE KENOSHA COUNTY GENERAL ZONING AND SHORELAND/FLOODPLAIN ZONING ORDINANCE.

CHAPTER 12.36-1 INTENT

- It is the intent of this section of the Ordinance to recognize that under certain conditions and circumstances, it may be necessary to obtain a variance from the terms of this Ordinance so long as said variance will not be contrary to the public interest, and where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship or practical difficulties and where the granting of such variance will uphold the spirit of this Ordinance and contribute to the justice of the particular case in question. Any variance granted under the terms of this ordinance shall, however, relate only to area requirements and not to use. Furthermore, it is the intent of this section to establish a Board of Adjustments for the purpose of reviewing applications for variances as well as reviewing orders and decisions made by the Office of Planning and Development.

CHAPTER 12.36-13 STANDARDS AND GUIDELINES

- In determining whether a variance is to be granted, the following standards and guidelines must be met in view of the evidence presented and in making its decision, these standards and guidelines shall be addressed by the board of adjustment:

1. The existence of special conditions or exceptional circumstances on the land in question.

2. The experiencing of unnecessary hardships or practical difficulties on the land in question either presently or in the future.

3. That these hardships or difficulties are the result of the aforementioned special conditions existing on the land and are not self-inflicted.

4. That the existence of these special conditions will restrict the use of the land if the Ordinance is applied literally so as to render the land useless.

5. That the limitation on the use of the land does not apply generally to other properties in the district.

6. That limiting the use of the property does not afford compensating gains to the public health, safety and welfare.

7. That the variance(s) requested are the minimum variance(s) needed to alleviate difficulties or hardships.

8. That the use of the parcel in question presently does conform to the ordinance.

9. That granting the variance applied for will not affect the public health, safety, morals and welfare of the community and other properties in the area.

10. That with respect to those areas located within the floodland districts, a variance would not permit filling and development contrary to the purpose and intent of the Camp Lake/Center Lake FWO Floodway Overlay District; would not permit a change in the boundaries of the FPO Floodplain Overlay District, FWO Camp Lake/Center Lake Floodway Overlay district or the FFO Camp Lake/Center Lake Floodplain Fringe Overlay District; would not permit a lower degree of flood protection in the floodland districts than the residential, commercial, institutional, or park basement or crawlway to be located below the 100-year recurrence interval flood elevation; would not allow a change or alteration of an historic structure, including its use, which would result in the structure; further, that the variance for the proposed action would not require amendment to the floodplain zoning ordinance' and furthermore, that the variance would not have the effect of granting or increasing a use property which is prohibited in the floodland districts or any action contrary to the provisions of Chapter NR 116 of the Wisconsin Administrative Code.

- ❑ Variances may be granted for example for reasons of topography, environmental protection or where permitted by state statute but in no event may a variance be granted where the primary reason for obtaining a variance is to obtain a more profitable use of the property, personal inconvenience, construction errors, economic reasons, self-created hardships, or where the property is presently a non-conforming use. Furthermore, variances may not be granted for the purpose of altering the sanitary requirements of this ordinance except for existing structures.

- ❑ The Board of Adjustments in considering the propriety of granting a variance shall not consider the number of persons for or against the granting of a variance but shall base their decision solely upon the equities of the situation involved.

- ❑ Variances may be granted in the form of an area or distance variance, however, use variances shall be specifically prohibited under this Ordinance.

Statutory Standards

- ❑ The applicant for a variance must clearly show the Board of Adjustments that three statutory standards that govern granting a variance will be met. These three standards require the existence of an unnecessary hardship, the presence of a unique property limitation, and the protection of the public interest.

- ❑ Unnecessary Hardship
  - ❖ A situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome.
  - ❖ The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly.

- Unique Property Limitation
  - Unique physical characteristics of the property must prevent the applicant from developing in compliance with the zoning ordinance.

- Protection of the Public Interest
  - Granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. The public interest includes the interests of the public at large, not just that of nearby property owners.
  - Conditions may be attached to a variance to protect adjoining properties and to preserve the essential character of the neighborhood.
  - A variance should include only the minimum relief necessary to allow reasonable use of a property.

NOTES

VARIANCE WORKSHEET

YOUR THREE STATUTORY STANDARDS TO PROVE BEFORE THE BOARD OF ADJUSTMENTS. (BE READY TO DISCUSS AT THE MEETING)

UNNECESSARY HARDSHIP -

UNIQUE PROPERTY LIMITATION -

PROTECTION OF THE PUBLIC INTEREST -