

ORDINANCE 1021

AMENDING VARIANCE PROCEDURES

THE CITY COUNCIL OF THE CITY OF LAKE MILLS, JEFFERSON COUNTY, WISCONSIN,
DOES ORDAIN AS FOLLOWS:

Section 1. Section 10-1-9 of the Lake Mills Municipal Code is repealed and recreated as follows:

10-1-9: **VARIANCES:**

A. Purpose: The Zoning Board of Appeals, after a public hearing, may determine and vary the regulations of this Title in harmony with their general purpose and intent when the Board makes findings of fact in accordance with the standards hereinafter prescribed and when the Board finds that there are practical difficulties or unnecessary hardships if the strict letter of the regulations of this Title were applied.

B. Application for Variance and Notice of Hearing: An application for a variance shall be filed, along with the required filing fee, with the Building Inspector by the owner(s) of the subject property or by the contract purchasers. The application shall contain such information as the Board may, by rule, require. The application shall be certified as complete by the Building Inspector before placing such item on any agenda to be acted upon by the Board. Said application shall be comprised of all of the following:

1. A map of the subject property showing all lands for which the variance is proposed. Said map and any attachments shall be submitted in a form which is clearly reproducible with a photocopier. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided.
2. A written description of the proposed variance describing the type of specific requirements of the variance proposed for the subject property.
3. A site plan of the subject property as proposed for development. Said site plan shall conform to any and all requirements of the Building Inspector.
4. Written justification for the requested variance consisting of the reasons why the Applicant believes the proposed variance is appropriate, particularly as evidenced by compliance with the standard set out in Paragraph C-3(a)-(e) below.

C. Review by the Building Inspector: The requested variance shall be reviewed by the Building Inspector as follows:

1. The Building Inspector shall determine whether the application is complete and fulfills the requirements of this Chapter. If the Building Inspector determines that the application is not complete or does not fulfill the requirements of this Chapter, he shall return the application to the Applicant. If the Building Inspector determines that the application is complete, he shall so notify the Applicant.

2. Upon notifying the Applicant that the application is complete, the Building Inspector shall review the application and evaluate and comment on the written justification for the proposed variance provided in the application.
3. The Building Inspector shall also evaluate the application to determine, particularly as evidenced by compliance with the standards of subsections a through e, below, whether a variance from the terms of the zoning ordinance 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.

a. What exceptional or extraordinary circumstances or special factors are present which apply to and are unique to the subject property and which are not held in common generally with the other properties within the zoning district? The response to this question shall clearly indicate how the subject property contains factors that are not generally present at other properties in the same zoning district. Specifically:

- (1). 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 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 it 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;
- (2) Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance;
- (3) Self-imposed hardship shall not be grounds for a variance;
- (4) Violations by, or variances granted to, neighboring properties shall not justify a variance;
- (5) The alleged hardship shall not be one that would have existed in the absence of the zoning ordinance. (For example, the lot would not be buildable because of topography in the absence of any setback requirements.)

b. In what manner do the factors identified in a, 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 proposed 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.

c. 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.

d. 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?

e. Have the factors that present the reason for the proposed variance been created by the act of the applicant 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 Zoning Ordinance, which was April 21, 1949, or after the effective date of any applicable amendments affecting the subject property? The response to this question shall clearly indicate that such factors existed prior to the effective date of this Zoning Ordinance, or the applicable effective date of any amendments, and were not created in light of the applicable zoning by action of the Applicant, a previous owner, or their agent.

4. The Building Inspector shall forward the report per C. 2 and 3 to the Board. If the Building Inspector determines that the proposal may be in conflict with the provisions of the Zoning Ordinance and Comprehensive Plan, the Building Inspector shall note this determination in the report.

D. Review and Determination by the Zoning Board of Appeals

1. After filing the complete application as determined by the Building Inspector, the Board shall hold a public hearing. Notice of the requested variance and the public hearing shall conform to the requirements of § 62.23(7)(d) of the Wisconsin Statutes. Said notice shall contain a description of the subject property and the proposed variance per Paragraph B. 1 and 3, above. In addition, at least 10 days before said public hearing, the Building Inspector shall mail an identical notice to the Applicant and to all property owners within 200 feet of the boundaries of the subject property. Failure to mail said notice, provided it is unintentional, shall not invalidate proceedings under this Section.
2. Within 60 days after the public hearing, or within an extension of said period approved by the Applicant and granted by the Board, the Board shall make its findings per Paragraph C. 3, above, and its determination regarding the application as a whole. The Board may request further information or additional reports from the Building Inspector or the Applicant. The Board may take final action on said request for a variance at the time of its initial meeting, or said proceedings may be continued from time to time for further consideration. The Board shall make a written report of its findings and determinations. Said report shall include a formal finding of fact developed and approved by the Board concerning the requirements of Paragraph C. 3. a through e, above.

E. Effect of Denial: No application for a variance which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Building Inspector.

F. Limited Effect of a Variance: Where the Board has granted a variance, such approval shall neither change the use classification of the building or premises, nor give it any status as a nonconforming use other than that which it has as a result of the variance. Granting a variance shall be

considered as being unique to the variance granted, and shall not be construed as precedent for any other proposed variance.

G. Stay of Proceedings: An application for a variance shall stay all legal proceedings furthering enforcement of any provisions of the Zoning Ordinance from which the Applicant is requesting a variance, unless the Building Inspector certifies to the Board after the request for a variance has been filed, that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a Court of Record upon application, on notice to the Building Inspector, and on due cause shown.

H. Notice to the DNR: The provisions of Section 10-9-1-3-M-4-7 shall be followed when a variance is requested for a property located in the Shoreland-Wetland Zoning District. The provisions of Section 10-10-7-C shall be followed when a variance is requested for property located in Floodplain Zoning Districts.

Section 2. All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed.

Section 3. This ordinance shall be in full force and effect upon passage and publication.

Dated this _____ day of _____, 2007.

Ed Grunden, City Council President

Attest:

James E. Heilman, City Clerk-Treasurer