



BENTON COUNTY PLANNING & ZONING DEPARTMENT
 531 DEWEY STREET, PO BOX 129
 FOLEY, MN 56329-0129
 PHONE: (320) 968-5065 FAX: (320) 968-5351

VARIANCE APPLICATION

Application Fee: \$400 (\$754 if it is an after the fact application) **File No.** _____

As set forth in Section 11.5 of the Benton County Development Code.

Property Owner _____	Phone _____
Applicant _____	
Mailing Address _____	
Property Address _____	
Parcel I.D. Number _____	
Township _____	Section _____ Range _____
Legal Description _____	

Benton County strongly recommends that you discuss your proposal with the adjacent property owners before a formal application is made. Any conflicts you can resolve ahead of time will make it easier and faster for the County to process your application.

Applicants **must** attach a **Statement of Justification** describing the grounds for the variance request and why the variance is necessary to alleviate practical difficulties or particular hardship in the way of carrying out the strict letter of the ordinance. The application will be considered incomplete and returned if the statement of justification is not provided.

I hereby swear and affirm that the information supplied to the Benton County Planning & Zoning Department is accurate and true. I acknowledge that this application is rendered invalid and void should the County determine that information supplied by me, the applicant, in applying for this variance, is inaccurate or untrue.

Signature: _____ Dated: _____
 Property Owner

STAFF USE ONLY

Application Fee Received and Reviewed for accuracy by _____
 Date _____ Receipt No. _____ Acres _____ Zoning _____
 Request for variance from _____

 Section: _____ Township: _____ Range: _____
 Meeting Date: _____ (Date shall not be scheduled until staff confirms receipt of all materials)

VARIANCE APPLICATION CHECKLIST

- 1) _____ **Application Packet** is completed and signed. Applications are only accepted from property owners. Applicant must provide **evidence of ownership**. (A valid purchase agreement is acceptable.)
- 2) _____ **Completed Statement of Justification** describing why a variance is necessary and what criteria is applicable. The Board of Adjustment criteria for granting a variance is attached.
- 3) _____ A site visit with Planning & Zoning Department staff may be required.
- 4) _____ A copy of the **complete legal description** from the abstract is needed for recording.
- 5) _____ **A detailed sketch or survey**, to scale, with a north arrow, of property is attached (show buildings, to property lines, septic, well, roads (name & number), driveway, wetlands, physical features, any feedlots within 1500 ft., etc.) **The sketch or survey MUST include all setbacks for the proposed building from adjacent property lines.****
- 6) _____ **Clearly identify** proposed structure(s), driveway, septic, fences, etc. by flagging or staking.
- 7) _____ Section 9.22.12(E) requires a **septic system** to be **in compliance** prior to a variance application in shoreland, as verified by a certificate of compliance. In nonshoreland areas, (Section 9.22.12(D)) septic system compliance status may be proved by a certificate of compliance or a notice of noncompliance. A certificate of compliance may be: (1) new installation less than five years old; or, (2) a compliance inspection less than 3 years old. Proof of certification must be provided for a variance application to be accepted.
- 8) _____ **Application fee of \$400** (including \$46.00 recording fee) or as amended. (\$754 fee for an after the fact variance application including recording fee.)
- 9) _____ Applicant (or their representative) **must be present** at the Board of Adjustment public hearing.
- 10) _____ **Denied variances may not be resubmitted for six months** (unless substantial new evidence is found).
- 11) _____ **Granted variances become void** if applicant does not proceed substantially within one year. (Proceed substantially means 40% of hours required to complete the project).
- 12) _____ Additional permits may be required.

***NOTE:** A Public Hearing will be scheduled for the next available Board of Adjustment meeting **only if the applicant provides all the required information prior to the application deadline.** State of Minnesota Law requires public notification for at least 10 days prior to the hearing.

****Applicant is responsible for utilizing accurate property boundaries in submitted documents.**

Applicant

Date

11.5 Variances

11.5.1 Criteria for Granting Variances

- (A) The proposed use is not prohibited in the zoning district in which the subject property is located.
- (B) The variance must be in harmony with the general purposes and intent of this Ordinance.
- (C) The terms of the variance must be consistent with the comprehensive plan.
- (D) The landowner must show that the variance is necessary to alleviate the practical difficulties in complying with the official control.

"Practical Difficulty" as used in connection with the granting of a variance means:

- (1) The property owner proposes to use the property in a reasonable manner not permitted by an official control;
- (2) The plight of the landowner is due to circumstances unique to the property, not created by the landowner;
- (3) The variance, if granted, will not alter the essential character of the locality;
- (4) The need for the variance involves more than economic considerations.

11.5.2 Procedure

- (A) The person applying for a variance shall fill out and submit to the Department of Development a variance application which shall include a statement of the difficulties or particular hardships claimed, along with the filing fee.
- (B) The Department of Development shall refer the application to the Board of Adjustment for review.
- (C) The Board of Adjustment shall hold a public hearing on the proposal in accordance with Minn. Stat. §15.99, as may be amended. Notice of the time, place and purpose of the public hearing shall be as provided by Minn. Stat. §394.26, as may be amended.
- (D) The petitioner or his representative shall appear before the Board of Adjustment in order to present evidence concerning the proposed variance.
- (E) The Board of Adjustment may impose conditions on the granting of variances to insure compliance and to protect adjacent properties and the public interest.
- (F) No resubmission of application for 6 months will be allowed without new evidence.

- (G) Granted variances become void if applicant does not proceed substantially on the work 1 year. To proceed substantially means to make visible improvement to the property and to have had applied to the property at least 40 percent of the man hours which it is reasonably estimated will be necessary for completion of the project. 1 or more extensions of not more than 6 months each may be granted by the Board of Adjustment for good cause.
- (H) Applications for variances will not be accepted from anyone who is not an owner of land for which the application is made.

WETLAND ADVISORY

Minnesota Law prohibits the draining or filling of any wetlands, unless specifically approved by the appropriate authorities.

“Wetlands” means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- 1) A predominance of hydric soils;
- 2) Are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and,
- 3) Under normal circumstances, support prevalence of such vegetation.

If you fill or drain a wetland in violation of Minnesota Law, you are subject to criminal penalties of up to **90 days in jail and/or a \$700 fine**. In addition, you could be ordered to restore any altered wetlands to their original condition at your own cost.

The placement of fill or dredged material in any wetland, lake, stream, river, pond, or prairie pothole may constitute a violation of Federal laws that are enforced by the U.S. Army Corps of Engineers. You are advised to contact that agency before commencing any such work.

There are eight types of wetland:

Type 1 – Seasonally flooded basins or flats. Soil is covered with water or waterlogged during seasonal periods but is usually well drained during the growing season.

Type 2 – Wet meadows. Soil is usually without standing water most of the growing season but is waterlogged within a few inches of the surface.

Type 3 – Soils which are usually waterlogged during the growing season and often covered with up to 6 inches of water. Many Type 3 wetlands have cattails and bulrushes and small open water area.

Type 4 – Soils which are usually covered with 6 inches to 3 feet of water during the growing season. Many Type 4 wetlands have cattails and bulrushes and much open water.

Type 5 – Shallow water ponds and reservoirs water 3 feet to 10 feet deep.

Type 6 – Shrub swamps. Soil is usually waterlogged during the growing season and are often covered with as much as 6 inches of water.

Type 7 – Wooded swamps. Soil is waterlogged at least to within a few inches of the surface during the growing season with as much as one foot of water. Occur mostly along sluggish streams or flood plains.

Type 8 – Bogs. Soil is usually waterlogged and supports a spongy covering of mosses.

As the applicant for this land use permit, you are responsible for determining whether any wetlands will be affected by this proposed project. By signing this document, the applicant affirms that no wetlands will be drained or filled during the course of the project.

Signature of Applicant Date