

RULES OF PROCEDURE OF THE WAUKESHA COUNTY BOARD OF ADJUSTMENT

I. GENERAL PROVISIONS

A. Authority- This Waukesha County Board of Adjustment (Board) has been established pursuant to §59.694 of the Wis. Stats. Its organization and procedures shall be governed by Wisconsin law, these Rules, and other applicable Waukesha County ordinances. The Board assumes all the responsibilities, duties, and powers as provided herein, and as provided by related statutes and laws. These rules are supplementary to the provisions of the Waukesha County Zoning Code, the Waukesha County Shoreland Protection Ordinance, the Waukesha County Floodland Protection Ordinance, the Waukesha County Airport Height Limitation Zoning Ordinance, and other applicable Waukesha County ordinances as they relate to the procedures of the Board of Adjustment.

B. Participation- A Board member shall participate in all proceedings of the Board except in the case of a conflict of interest, a disqualification, an excused absence, or another manifest inability to serve.

C. Conflict of Interest- Any Board member who has any direct or significant indirect interest in a matter before the Board shall not vote thereon nor participate in the deliberation of such matter at any meeting or hearing at which the matter is under consideration. Without limitation by way of enumeration, a disqualifying conflict of interest exists when: 1) the Board member is the Appellant, is the spouse of an Appellant, is related to the Appellant within the third degree of consanguinity, or is the husband or wife of someone so related; or, 2) the Appellant is the employer, employee, partner of the Board member, or is a corporation in which the Board member is a major shareholder or has a major financial interest; or, 3) the Board member owns property that is within 300 feet of the property that is the subject of the application.

D. Limit of Authority- Nothing in these Rules shall be construed to give or grant to the Board the power or authority to alter or change the Waukesha County Zoning Code, the Waukesha County Shoreland Protection Ordinance, the Waukesha County Floodland Protection Ordinance, the Waukesha County Airport Height Limitation Zoning Ordinance or another applicable Waukesha County ordinance including the zoning or other official maps.

E. Office of the Board- The Office of the Board is located at the Waukesha County Department of Parks and Land Use, Planning and Zoning Division, Administration Center, 515 W. Moreland Blvd., Room AC230, Waukesha, Wisconsin 53188. All public records of the Board are available for inspection during regular working hours.

F. Definitions- Unless otherwise indicated by the context in these Rules:

1. Administrator or Officer- The Waukesha County Zoning Administrator or legal representative or agent thereof.

2. Appellant- The person requesting the appeal or making application for a variance or special exception, or that person's attorney, agent or other authorized representative.

3. Meeting- Also means hearing where appropriate and shall include on-site inspections where applicable.

4. County Ordinance- The Waukesha County Zoning Code, the Waukesha County Shoreland Protection Ordinance, the Waukesha County Floodland Protection Ordinance, the Waukesha County Stormwater Management and Erosion Control Ordinance, the Waukesha County Airport Height Limitation Zoning Ordinance, and any other applicable Waukesha County Ordinance.

5. County Staff- For the purposes of these rules, County Staff shall be staff members of the Waukesha County Department of Parks and Land Use.

II. DUTIES OF OFFICERS OF THE BOARD

A. Chairperson- The Board shall elect its own Chairperson to hold office for one (1) year and until his or her successor is elected. The Chairperson shall preside over and direct the conduct of all the meetings and hearings of the Board. The Chairperson may administer oaths and compel the attendance of the witnesses through the issuance of subpoenas. The Chairperson shall, subject to these Rules and further instructions from the Board, determine the dates, times, and location of the meetings, direct the official business of the Board, and decide on all points of procedure or order. The Chairperson may be overruled by a majority vote of the Board members present and voting.

B. Vice-Chairperson- The Vice-Chairperson shall be elected as set forth above for the Chairperson and shall assume the duties and authority of the Chairperson or Secretary in the absence or inability of either to serve.

C. Secretary- The Secretary shall be designated by the Chairperson and shall be responsible for the following: recording and maintaining audio tapes of all meetings and hearings; maintaining written summaries of the Board's proceedings, showing the vote of each member upon every question, or, if absent or failing to vote, indicating that fact; keeping records of its official actions; keeping a record of all hearings; and recording the names and addresses of all persons appearing before the Board. The Secretary shall, at the direction of the Board and Chairperson, conduct the correspondence of the Board; have published in the official newspaper public notices of meetings and hearings as required by law and rules of procedure; file audio tapes, written summaries, and records in the office of record of the Board, which shall be a public record; and shall be the custodian of the files of the Board and keep all the records. While the Board may delegate these duties to County Staff, the Secretary shall sign or authorize the signature of all decision sheets and the minutes of the Board. The records of the Board shall be kept in the office of the Waukesha County Department of Parks and Land Use.

NOTE: The SFPO was amended in 2014 to state that the Zoning Administrator is prohibited

from serving as Secretary to the BOA.**III. APPEALS TO THE BOARD**

A. Who may file- Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the building inspector or other administrative officer. The Appellant shall file a Notice of Appeal identifying the specific grounds of appeal with the officer from whom the appeal is taken and with the Board. The Board may dismiss appeals which do not have standing as described herein.

B. Required Information- Appeals shall be submitted in the form prescribed by the Board. The Appellant shall provide all applicable information requested on the form. A scale drawing shall accompany each form showing the location and size of the property; existing structures, wells, and sanitary systems; all abutting properties and structures thereon; and any change or addition requested. The Appellant shall state all plans for future development or construction that may affect the property or the action on appeal.

If the Appellant is requesting a variance, the Appellant must allege facts that would prove that compliance with the ordinance would cause the Appellant to experience unnecessary hardship, that there are unique physical conditions of the property which are not self-created which prevents compliance with the ordinance, and that the granting of the variance will not adversely affect the general public interest or welfare. The Appellant shall also provide any additional information requested by the Board.

Failure to submit the appeal in proper form or failure to supply the requested additional information at the time of the hearing without good cause shall be sufficient grounds for dismissal, denial of the appeal, or continuance of the hearing until such information is received by the Board.

C. Copies to be sent- The Administrator shall promptly transmit a copy of the original appeal and associated documents to the Board along with the notice of the meeting time and date. In the case of appeals affecting property in the shoreland or floodland districts, one copy of the appeal shall also be sent to the Wisconsin Department of Natural Resources at least ten days prior to the hearing date.

D. Time to File Appeal- To be considered by the Board, an appeal of a decision of an administrative officer with specific regard to the Waukesha County Floodland Protection Ordinance must be received by the Board's office of record within thirty (30) days from the date of the decision that is being appealed. All other appeals must be received by the Board's office of record within twenty (20) days from the date of the decision that is being appealed.

E. Effect of Appeal- A timely appeal of a decision of an administrative officer shall stay all the proceedings and the furtherance of the action appealed from unless the officer from whom the appeal is taken shall certify to the Board, after the notice of appeal has been filed, that, by the reason of facts stated, a stay would cause imminent peril to life or

property. In such case, the proceedings should not be stayed other than by a restraining order, which may be granted by the Board or by a Court of Record upon due cause shown.

F. Hearing- Each appeal of a decision of an administrative officer or an application for a variance or special exception shall be heard within a reasonable time, not to exceed ninety (90) days from the time that the appeal or complete application for a variance or special exception was filed. The Board shall fix a reasonable time for the hearing of the appeal and publish a class 2 notice thereof under Chapter 985 Wisconsin Statutes, as well as give notice to the parties of interest.

IV. MEETINGS

A. Date, Time and Location of Meetings- Meetings of the Board shall be held at the call of the Chairperson and at other such times as the Board may determine. Public notice shall be made in accordance with the law.

B. Open to the Public- In accordance with the Wisconsin Open Meeting Law, all proceedings of the Board shall be open to the public, except that, with prior public notice, the Board may go into closed session to consult with legal counsel on litigation to which the Board may be or is a party. Formal decisions on all matters shall be rendered in open session.

C. Quorum- A quorum shall consist of a simple majority of the entire Board.

D. Court Reporter- Any party shall have the right, at their own expense, to have a certified stenographer present to make a record of the proceedings of the matter in which they are interested provided that an original copy of the transcripts as may be transcribed shall be filed with the records of the Board immediately after completion. The Chairperson of the Board, at his or her discretion or at the direction of the majority of the Board, may arrange for a stenographic record to be made at the Board's expense.

E. Rules of Evidence- The Board shall not be bound by judicial rules of evidence. It may exclude irrelevant, hearsay, immaterial, incompetent, unduly argumentative, or repetitious testimony or evidence. The Chairperson shall rule on all questions relating to the admissibility of the evidence, but that ruling may be overruled by a majority of the Board.

F. Robert's Rules of Order- At the discretion of the Chairperson, Robert's Rules of Order shall govern the action of the Board except as otherwise prescribed by Wisconsin law or by these Rules.

G. Decorum- The Chairperson shall maintain order and decorum during all Board proceedings. All persons present during the Board proceedings shall conduct themselves properly so as not to disrupt the hearing or meeting. The Chairperson reserves the right to order any person to leave if that person has conducted himself or herself in a disorderly manner and has persisted in such conduct after being directed by the Chairperson to cease

such conduct.

V. DECISIONS OF THE BOARD

A. Majority Vote Required- If a quorum is present, the Board may take action by a majority vote of the members present. On all votes where the Board is equally divided, the question shall be deemed lost. The action of the majority is the action of the entire Board, which speaks as a single entity.

B. Time of the Decision- Unless continued at the request of the Appellant or the Board or for other good cause, the Board shall render a decision on each appeal at the conclusion of the hearing thereon or within 15 days thereafter. A continuation or adjournment of a hearing, made at a noticed hearing date, to a time and place certain, is adequate notice to the Appellant, Board and the public of a new hearing date.

C. Form of the Decision- The decision shall be in the form prescribed by the Board. The decision shall be in writing and shall be signed by an officer of the Board. The decision shall indicate the findings of fact in the appeal or application for variance or special exception and the rationale for the Board's decision. The decision should clearly indicate that the appeal is denied, granted in whole or in part, or granted subject to certain conditions.

D. Conditions- Conditions imposed by the Board in the granting of any appeal shall be specifically stated in the decision and shall be fully set forth in any subsequent order or permit. Permits issued or variances approved under conditional approval by the Board shall be valid only as long as the conditions are followed.

E. Filing and Notice of the Decision- Every Board decision shall be promptly filed in the office of the Board. Each decision shall be a public record. A copy of the findings and the decision shall be mailed to the Appellant by regular mail within three business days after the filing of the decision.

F. Order Valid for Two Years- Unless otherwise specified by the Board, any variance or special exception that does not involve a permit must be exercised by the Appellant within two years of the date of the Board granting the variance or special exception. If the special exception or variance does require a permit, the permit must be obtained within two years of the date of the granting of the variance or special exception. If not exercised or obtained within the time allowed, the permit and/or privilege shall expire and become null and void. However, an extension of the permit or privilege may be granted by the Board upon written application of the Appellant without additional fee and for good cause as determined by the Board.

G. Decision to Relate to Specific Property- The decisions of the Board shall apply to the specific property which was subject to the application rather than to any individual. The decision is valid only for specific premises in the appeal and is non-transferable to other properties.

H. Appeals to be Determined Individually- No decision of the Board shall act as binding precedent. Each appeal shall be decided by its merits and upon the attendant circumstances.

I. Decisions to be Filed with the State- Decisions affecting property in the Shoreland and Floodland districts shall be sent to the district office of the Wisconsin Department of Natural Resources.

J. Continuances of Hearings- The Board may continue consideration of an appeal on the request of the Appellant or by any Administrator, building inspector, Board member, or other administrative official, officer, or department. The date, time, and place of the adjourned day shall be announced prior to the adjournment.

K. Withdrawal- An Appellant may withdraw an appeal at any time prior to the Board rendering the decision. Withdrawal of the appeal shall not entitle the Appellant to a refund of the filing fee.

L. Appeal of a Board Decision- A person aggrieved by any decision of the Board of Adjustment, a tax payer, 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, commence an action seeking the remedy available by certiorari in the manner provided in §59.694 of the Wisconsin Statutes.

VI. REHEARING OF A PREVIOUS DECISION

The Board may not rehear a previous decision, except the Board may reconsider a decision as provided by these rules or when required by a court order.

VII. RECONSIDERATION

A. Reconsideration on Board Motion

A decision of the Board may be reconsidered:

- (i) by motion of a Board member who voted on the prevailing side and at the same meeting, which may be immediately disposed of without further notice, or
- (ii) by motion of a Board member who voted on the prevailing side, made not later than the following regular meeting, in which event the matter shall be placed on the calendar for a subsequent hearing and a new notice given

without an additional fee charged to the Appellant.

B. Reconsideration by Request of the Appellant

The Board may entertain a request for reconsideration by an Appellant provided that the request is in writing and (i) based upon new, substantial, or material evidence that could not have reasonably been presented at the previous hearing and the request includes the reason why the evidence was not available at the original hearing, or (ii) when a previous variance or appeal was denied without hearing because the appellant failed to appear for the scheduled hearing and the appellant shows good cause for such nonappearance.

A request for reconsideration must be filed in the office of the Board no later than thirty (30) days from the date of the filing of the Board's decision. On receipt of a properly filed request to reconsider, the matter will be placed on the next agenda that will allow posting of the agenda according to law, under "Old Business."

C. Procedures for Reconsideration

A simple majority vote shall be sufficient to reconsider a previous decision.

If the request or motion to reconsider is denied, the Board shall enter on the minutes the basis of the request or motion, the reasons why it was denied, and the vote of the board members thereon.

If the request or motion to reconsider is approved, the matter will be placed on the agenda for the next regular meeting and notice given of the reconsideration as required for an original hearing, except that a motion of a Board member to reconsider made at the same meeting may be immediately disposed of without further notice as provided for in subsection A, above. The fee to an appellant for a hearing on reconsideration shall be the same as for the original appeal or application for variance or special exception.

The Board may only allow one reconsideration of a previous decision based upon a request of an appellant.

D. Reconsideration does not toll the appeal period

The filing of a request for reconsideration, the approval of a motion for reconsideration, or a hearing based upon the reconsideration does not toll or stop the running of the 30 day period to appeal the original decision to the circuit court.

VIII. AMENDMENT OF RULES- These Rules may be changed or amended from time to time by a majority vote of the Board at a regular or special meeting.

The foregoing Rules are hereby adopted by the Waukesha County Board of Adjustment this 11th day of October 2023.

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