

**Official Bylaws
of the
Washburn County Board of Adjustments**

Adopted September 2, 2008



RULES AND BY – LAWS OF THE
WASHBURN COUNTY BOARD OF ADJUSTMENTS

ADOPTED September 2008

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RULES AND BY – LAWS OF THE
WASHBURN COUNTY BOARD OF ADJUSTMENTS

SECTION I General Provisions

1. Authority:

This Board has been established pursuant to Section 59.694 of the Wisconsin Statutes, and assumes thereby, all responsibilities, duties, and powers as provided therein and by related statutes. A copy of these rules shall be filed with the County Clerk, and kept as public record. These rules are supplementary to the Zoning Ordinance provisions of the County as they relate to the procedures of the Board of Adjustments, and available to the public.

2. Title:

The Official title of the Board is: The Washburn County Board of Adjustments.

3. Membership:

The Board shall consist of five (5) members who shall be appointed by the Chairperson of the County Board, with approval of the County Board, for terms in accord with § 59.694 (2)(a), Wis. Stats., together with two (2) alternate members as prescribed in § 59.694(2)(am), Wis. Stats.

4. Conflicts of Interest:

A member of the Board who has any direct or indirect interest, personal or financial, in any matter coming before the Board for a hearing, shall disclose said interest to the Board in advance of the hearing. No such member shall participate in the hearing or in the following deliberation, no shall such member vote on such matter. A conflict of interest requiring disqualification shall include the following:

- a) When a member or his or her spouse is applying to the Board on an appeal or for a variance or is related within the third degree of consanguinity to the applicant.
- b) When a member is the employer or employee of the applicant or is a member or stockholder in a partnership, corporation or other form of association or is a sole proprietor of an entity seeking to appeal a decision or asking for a variance.
- c) If a member owns real estate within 300 feet of the property that is the subject of the application for a hearing.

In all other situations, each member shall be guided by Wisconsin law and Washburn County Ordinances as to whether a conflict of interest exists, requiring or recommending to an individual member that he or she should choose not to participate.

5. Limitations:

Nothing herein, shall be construed to give or grant to the Board, the power or authority to alter or change the Zoning Ordinance or zoning of other official maps of the County, which authority is reserved to the Zoning Committee and County Board of Supervisors.

6. Board's Office:

The office of the Board shall be located at the Zoning Administrator's office. All records of the Board shall be available for public inspection during office hours, 8:00 a.m. to 4:30 p.m., Monday thru Friday, except legal holidays.

SECTION II Officers and Duties

1. Officers:

The Board shall elect a Chairperson, and a Vice-Chairperson, from among its regular members. The officers shall hold office until their successors are elected. The Board may, at any meeting or hearing, elect from among the membership, the replacement for an officer who for whatever reason, is unable to perform the duties of his/her office.

2. Duties of Officers:

The Chairperson, if present, otherwise the Vice-Chairperson, shall preside over and direct the conduct of all meetings and Hearings of the Board and may administer oaths, and compel the attendance of witnesses. The Chairperson shall report on all official transactions that have not otherwise come to the attention of the Board. The Chairperson shall direct the official business of the Board; supervise the work of the Board. The Chairperson, or the presiding officer, shall decide all points of the procedure or order, unless otherwise directed by the majority of the members in attendance on motion duly made and approved.

- a) The Board shall record minutes of the Board's proceedings, showing the vote of each member on each question or, if absent or excused from participation, the fact of said absence or recusal. The Board shall also maintain records of its official actions and shall keep a verbal record of all hearings which shall include the names and addresses of all persons appearing before the Board in person or by an attorney and it shall publish

in the official newspaper the notices of meetings and hearings as required by law. The Board shall file all of its records with the County Zoning Administrator, who shall act on behalf of the Chairperson of the Board in maintenance and preservation of those records. At all times the Chairperson of the Board, subject to delegation of duties under this provision, shall be deemed to be the custodian of the Board records in accord with the Public Records Law.

- b) Staff of the Zoning Department shall perform clerical duties and functions on behalf of the Board.
- c) Minutes of closed sessions shall be separated from those of open sessions and shall remain confidential until such time as when, in accord with Wisconsin Law, they shall be deemed to be subject to a public records request.

SECTION III Meetings

1. Time:

Meetings and hearings of the Board shall be held at the call of the Chairperson, provided that all Board members are notified at least 48 hours in advance of any meeting or hearing. In the alternative, if a majority of the regular members of the Board deem it necessary or appropriate to call a meeting and the Chairperson does not agree, such majority of the regular Board may call a meeting on 48 hours notice, as well. Meetings and hearings may be cancelled upon notice at least 24 hours in advance thereof.

2. Open Meetings and Hearings Format; Closed Sessions:

All meetings and public hearings held by the Board shall be open to the public. The only exception to this shall be those portions of meetings, which are duly convened into closed session in accord with § 19.85, Wis. Stats. No closed session shall be held by the Board under § 19.85 (1) (a), Wis. Stats., for deliberation purposes except in relationship to an evidentiary hearing held under § 19.85 (1) (b), Wis. Stats.

3. Quorum:

A quorum shall consist of a majority of all members of the Board and no action may be taken except by a vote of the members present. If a quorum is not present, a lesser number of members may adjourn the meeting to a time certain.

4. Parliamentary Procedure Guide:

The Board shall be guided by but shall not be considered to be bound by the rules of procedure set forth in Robert's Rules of Procedure.

5. Notice of Meetings:

All hearings and meetings of the Board shall be held upon notice to the public and to interested persons, which shall be posted, published or personally served or mailed in accord with the relevant provisions of Wisconsin Law. In addition, for notice purposes, the Board shall comply with the Open Meetings Law, Subch. IV, Ch. 19, Wis. Stats., with respect to the timing, means of noticing and contents of such notices.

SECTION IV Appeals and Variances

The powers and duties of the Board of Adjustments are identified in Sections 59.694 (7) of the Wisconsin Statutes and in the Washburn County Zoning Ordinance. The Board shall have the following general powers:

APPEALS:

- ❑ To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of the Zoning Ordinance. In exercise of its power to grant or deny appeals, the Board may affirm or reverse the administrator, in whole or in part, or it may modify the order, requirement, decision, or determination in question and may make such order, requirement, decision or determination as ought to be made and to this effect shall have all of the powers of the administrator from whom the appeal is taken.

VARIANCES:

- ❑ To authorize, upon appeal in specific cases, such variance of the Zoning 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 un-necessary hardship and so that the spirit of the ordinance shall be observed, public welfare and safety secured and substantial justice done.
- ❑ In accord with Osterhues vs. Bd. of Adjustment for Washburn County, 282 Wis. 2d 228 (2005), before proceeding to a hearing on the merits on such appeal, the Board shall decide whether or not it wants to determine the case solely upon the basis of the record of evidence presented to the administrative official, in which case it shall render an independent decision on that basis alone or, in the alternative, whether it wants to take new testimony and evidence to supplement the record from below, in

which event its determination shall be based upon the evidence as supplemented in the form of a de novo hearing. In making the decision of whether or not to allow the supplementation of the record from below, the Board shall be guided by its analysis of whether the said record is sufficiently complete as to allow the Board to rely upon it as presenting to it a factual basis upon which to render its determination. To this extent, the Board may choose to perform a review of the record to enable it to make this preliminary determination.

A Variance:

- ❖ Shall be consistent with the spirit and intent of the Zoning Ordinance, for which the stated purpose of the Zoning Ordinance or state law may act as a guide.
- ❖ Shall not permit a use which is inconsistent with the law governing the granting of use variances.
- ❖ Shall not be granted unless it is shown that the variance will not be contrary to the public interest or damaging to the rights of other persons or property values in the area.
- ❖ Shall not be granted for land uses or spatial purposes, which logically require pursuit of an amendment to the Zoning Ordinance.
- ❖ Shall not be granted on the basis of economic gain or loss.
- ❖ Shall not be granted for a self-created hardship.
 - Be responsible for the interpretation of any of the provisions of the Zoning Ordinance, which may to be clarified in regard to a specific situation or peculiarity.
 - Hear and decide Appeals on the extension of structures, buildings, or premises devoted to non-conforming uses.
- ❖ Shall not be granted in the Floodway or Wetland/Shoreland Zoning Districts.
- ❖ In determining whether to grant or deny a variance, the Board shall be guided by the principle that it is only under circumstances where the applicant will suffer an unnecessary hardship that a variance is allowed. For the purposes of “area” variances, the standard to be applied is that “compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render

conformity with such restrictions unnecessarily burdensome. For purpose of “use” variances, the standard to be applied is that in the absence of the variance, the owner will have no reasonable use of the property. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396 (1998) and State v. Waushara County Board of Adjustment, 271 Wis. 2d 547 (2004).

SECTION V Application and Appeal

To implement its powers in the hearing of appeals from the decisions and determinations of administrative officials, the Board may choose at the onset of the public hearing held in the matter of such an appeal to first determine whether or not to take additional evidence. If it decides to do so, it may either proceed to hold the hearing at that time or it may vote to adjourn the hearing to another date and time. If it decides not to take additional evidence, the applicant shall proceed to present his or her case to the Board for its consideration in conjunction with the record from below.

1. The applicant or appellant, his/her agent, or attorney shall file applications to the Board and appeals from the Zoning Administrator’s decision, with the Zoning Administrator. Appeals may be filed by any person aggrieved or by an officer, department, Board, or by the Town affected by the Zoning Administrator and/or Zoning Committee’s decisions on Conditional Use Permits. Appeals from the Zoning Administrator and Zoning Committee’s decisions, must be filed within thirty (30) days after the decision, in writing, is made and filed.

Each appeal or application shall be considered by the Board at its next available meeting, provided there is sufficient time between the date of the filing and the date of the meeting for the required Hearing Notices to be published, as established by law.

2. State Reasons:

The reason for the application or Appeal, must be stated and the reasons why the request should be granted, must also be stated by the applicant:

- a) If a variance, facts should be stated upon which findings may be made by the Board to justify the granting of the Variance.
- b) If an appeal is based on an alleged error or abuse of discretion of the Zoning Administrator, facts should be stated as to the nature thereof.

The Board may refuse to hear a case upon the failure of the applicant to supply the required information called for, on the forms, and as further required by the Zoning Administrator.

3. Notices:

The Zoning Office shall transmit notices to the Board of Adjustments, copy in Zoning Office files, to Clerk of the Town Board, and where applicable, affecting property within the shore lands, notice to the Department of Natural Resources.

Notice of each Hearing will include:

- a) Publication of a Class 2 Hearing notice in the designated County Newspaper.
- b) Notice to the applicant, and where required, Department of Natural Resources, ten (10) days before the Hearing.
- c) Notice to the Town Clerk and Chairperson, no less than one week prior to the Hearing.
- d) Notice of hearing to City Clerk, Village Clerk, or Village President, when property affected, lies within 1½ miles of the closest city or village limits. The municipality (town, city, village) will be requested to submit their decision on each application involved in their jurisdiction. This decision shall be signed by the Board members and attested by the Clerk

The Board of Adjustments, in granting or denying the variance requested, may consider the decision of the municipality.

- e) Notice and the applicant's request, shall be sent to property owners within three hundred (300) feet of the perimeter of the affected property. The Board may consider comments from the surrounding property owners. Failure of such opinion letter to reach any property owner shall not invalidate any decision made on a Variance.

4. Effect of Appeal:

An appeal shall stay all proceedings and furtherance of the action appealed from, unless the officer from whom the appeal is taken, shall certify to the Board of Adjustments, after notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stated, otherwise than by a restraining order, which may be granted by the Board of Adjustments, or by a court of record on application and notice to the officer from whom the appeal is taken, and on due cause shown.

5. Fees:

The applicant shall pay such fee as established by the Zoning Committee, and shall be deposited to the Zoning Office, for each application, before a public hearing will be scheduled.

SECTION VI Hearing Procedure

1) Appearances; Effect of Non Appearance; Adjournments; Production of Witnesses and Evidence Upon Demand of Chairperson

- a) Each applicant shall appear before the Board at the time and on the date scheduled for a hearing on his or her matter. Appearances shall be made in person and each applicant may choose to be represented by an attorney or agent of his or her choice. The failure of an applicant to appear may result in dismissal of his or her appeal or variance application
- b) In its sound discretion, the Board may move to table an application or adjourn the hearing in the matter to a date and time certain.
- c) The Chairperson may request the attendance of witnesses or the production of evidence, if deemed necessary and not produced by the parties to an appeal or application.

2) Order of Hearings:

Hearings on cases shall normally follow as:

- a. Application read, and reason for denial by the administrative official.
- b. Determination of jurisdiction, if requested.
- c. Applicants file which may include: The Town Board's decision when applicable, City or Village Council decision; maps or surveys; inspection reports; opinion letters; correspondence; soil test results; plot plan or sketches; and application.
- d. Applicant's statements and presentation of evidence of a hearing.
- e. Others in support of applicant, making statements, and if any, presentation of evidence.

- f. Objector's statement, and if any evidence, presentation.
- g. Staff recommendations, when requested.
- h. Questions by Board members.
- i. Rebuttals as permitted by the Board.
- j. Deliberations and decisions by the Board.

The Board reserves the right, on a case by case basis, to deviate from the above stated format.

3) Preliminary Matters:

Following the reading of the application, or appeal, the Board may hear arguments on the question of jurisdiction and request that briefs be filed on the point. The Board may proceed with the hearing and taking of testimony; in any event, and reserve its determination on a jurisdictional question until after hearing all testimony and render a decision on the merits as if it had jurisdiction. The Board may make an immediate determination and close the Hearing, finding it lacks jurisdiction. If the Board determines by motion, that it lacks jurisdiction, the decision shall be recorded as a vote to deny the request.

Orderly procedure requires that each side shall proceed without interruption by the other; that all arguments shall be addressed to the Board, and that there be no questioning or arguments between individuals.

Witnesses shall be identified to the Board by the parties who call upon them to testify. In the case of other interested persons who seek to testify for or against the applicant, each such person shall identify him or herself to the Board as well as to state their interest in the proceedings. All testimony shall be addressed to the Board.

4) Questions and Debate; Evidence:

During the hearing, the Chairperson, Board members, or its legal counsel, together with staff of the Zoning Department, may ask questions of the applicant and all witnesses participating in the hearing. Such questioning shall be for the purpose of bringing out relevant facts, circumstances and conditions which may affect the matter and assist the Board in arriving at its decision.

All supporting evidence for and against each case shall be presented to the Board. The applicant is responsible for presentation of information supporting

his/her case. The Board may take notice of relevant facts on its own motion or that of a party to the proceedings.

5) Additional Evidence; Rules of Evidence:

The Board may take a case under advisement for later consideration and determination, or may “table” or defer action whenever it concludes that additional evidence is needed, or at the Boards discretion, on-site inspections, or further study is required.

The Board shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative, or repetitious testimony, or evidence.

The Chairperson shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board members.

Persons having an interest in the case may attend the hearing and may request an opportunity to testify provided they identify themselves.

6) Record of Hearing:

All proceedings at a hearing shall be tape recorded or, at the option of the Board, recorded by a court reporter. On record there will be a summary of motions, witnesses, appearances, roll call votes, and all other matters constituting the substance of the proceedings. Verbatim transcripts of recorded proceedings shall not be prepared unless ordered by the Circuit Court by a Writ of Certiorari. The proceedings shall become part of the written record filed in the Zoning Office, and open to the public.

7) Adjournments:

When the applications or appeals cannot be disposed of on the day set, the Board may adjourn from day to day or to a certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of adjournment shall not be given to the absent members of the Board.

8) Application Withdrawal:

An applicant, or appellant may withdraw an application or appeal at any time. Withdrawal of an application or Appeal shall not entitle the applicant to a refund of the filing fee.

SECTION VII Decisions of the Board

1. Majority Vote Required:

The concurring vote of a majority of all members present and who participated in a hearing shall be necessary in order to approve, deny, or table any matter, which comes before the Board for its consideration.

2. Decisions:

Each decision shall be in writing and shall set forth the ultimate facts upon which it is based. The Board may choose, in its discretion, to file formal findings of fact and conclusions of law but if it does not do so in a given case, the record of the proceedings, upon the basis of which decision was made, shall be substituted for formal findings and conclusions.

Within thirty (30) days of the close of the hearing to which the decision relates, written notice of such decision, shall be mailed to the applicant, and town clerk, when within the shore lands, or affecting the Wetland/Shore land district, to the Department of Natural Resources. The approval or granting by the Board is deemed to constitute an order to the Zoning Office to issue a permit. A denial of the application or appeal is deemed to be an order to deny the permit.

The decision of the Board shall apply solely to the parcel of real estate, which is identified as being the subject of the application for a variance or appeal. No Decision shall apply to any other property, nor shall any decision of the Board be considered to create precedent. Unless otherwise set forth in the decision, both variances and appeal decisions shall be deemed to run with the identified parcel.

No action of the Board shall set a binding precedent. Each case shall be decided upon its merits and attendant circumstances, provided the Board shall not act arbitrarily or capriciously.

3. Findings of Fact:

In acting on any matters before it, the Board shall make “findings” supporting its actions. In every case where a Variance from the Zoning Ordinance is granted, the minutes of the Board shall affirmatively show that an un-necessary hardship or practical difficulty exists, and the records of the Board shall clearly show in what particular and specific respects an un-necessary hardship or practical difficulty is created.

4. Informal Advice:

The Board shall not give informal advice, nor shall any of its members, acting outside of a meeting of the Board purport to advise any person concerning the Zoning Ordinance, including but not limited to officials, employees of the County or any other person.

5. Valid Permit:

In the event that the result of a hearing held by the Board requires that the applicant or appellant apply for and obtain a permit from the Zoning Department, each such permit shall be obtained within a period of two (2) years after the date of the filing of the Board decision or the decision granting authorization to obtain such permit shall be deemed to be null and void. Such period of time within which to obtain permits may be extended on motion of the Board for a period not to exceed five (5) years from and after the date of the filing of the decision.

6. Circuit Court Action:

Any persons, jointly, or severally aggrieved by any decision of the Board of Adjustments, or any taxpayer, or any officer, department, board, or Bureau of the County, may commence an action in Circuit Court for Writ of Certiorari to review the legality of such decision in whole or in part, within thirty (30) days after the filing of the decision in the Zoning Office.

SECTION VIII Refilings and Rehearings

- a. No matter which has been acted upon by the Board concerning the same or part of the same property, shall be considered again within one (1) year from the date of the action, except, as hereinafter provided.
- b. The Board may not reopen any case upon which a previous hearing has been held, except to correct a manifest error.
- c. A case will be considered as heard and closed at such time as the Board approves or rejects and application or Appeal, by motion, or when it is considered closed by operation of these rules.
- d. A decision of the Board may be reconsidered by motion to reconsider, made at the same meeting, which may be immediately disposed of without further notice.

- e. The filing of a motion for reconsideration shall stop the running of the thirty (30) day period in which a petition to the Circuit Court must be made. The thirty (30) day period will run in such event from the date of a decision not to reconsider, is made by the Board, or if the matter is reconsidered, from the date the decision on the reconsidered matter is filed in the Zoning Office.
- f. A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused the person requesting it, the Board shall enter on the minutes, the basis of the request, reason it was refused, and the vote of the Board members.

SECTION IX Annual Report

The Board of Adjustments Annual Report of its activities, may be included in the Zoning Department's Annual Report, and submitted to the County Board.

SECTION X Definitions

Certain terms or words used herein are defined as follows:

- Aggrieved person: Any person whose substantial interests are adversely affected by a determination. Aggrieved persons may file Appeals, or appear in opposition to an application.
- Appeal: An action seeking the review by the Board of an alleged error of fact or of law in any order, requirement, decision, or determination made by an administrative official.
- Application: A request for a variance from the specific requirements of the Zoning Code.
- Appellate Body: A body authorized to review the judgments made by other people. The Board of Adjustment hears Appeal of the decisions of the Zoning Administrator or the Zoning Committee. The Circuit Court hears Appeals of the Board's decisions.
- Certiorari: Judicial review of the decision of an administrative body, such as the Board, in which the Court Generally reviews the record of that body to which it applies the following standards: (1) Did the Board have jurisdiction over the subject matter? (2) Did the Board commit an error of Law? (3) Was there substantial evidence placed before the Board in support of the decision made?

and (4) Did the Board act arbitrarily and capriciously, exercising its will as opposed to its judgment?

- Closed Session: A session closed to the public based on a majority vote of the members for the purpose of deliberating quasi-judicial matters or conferring with legal counsel.
- Findings of Fact: A statement of the Board's rationale behind the decision and facts that support the decision.
- Hearing De Novo: To hear anew, as in the case of an appeal from a decision of an administrative official in which the Board determines that the factual record is insufficient and accordingly causes a record to be made in the proceeding before it.
- Variance: An authorization granted by the Board to make use of property subject to the Zoning Code in a manner, which is inconsistent with spatial or use requirements imposed thereunder, under circumstances in which the absence of such variance, the owner or occupant of the property would be subjected to an unnecessary hardship.
- Un-necessary Hardship: Circumstance where special conditions which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height, or density, un-necessarily burdensome, or unreasonable in light of the purposes of the Zoning Ordinance.

The Board of Adjustments, for the County of Washburn, hereby adopts the foregoing Rules and Regulations on _____, 2008.

Ruth King, Chairperson

David Dodge, Vice-Chairperson

Bob Dawson

Joe Weiss

Harold Block