

CHAPTER 8 DEVELOPMENT REVIEW PROCEDURES

Part 6: Variances

Article G - Appeals

Sec. 13-8-40 Appeals to the Zoning Board of Appeals.

- (a) **Scope of Appeals.** Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within reasonable thirty (30) days of the alleged grievance or judgment in question by filing with the officer(s) from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof, together with payment of a filing fee of One Hundred Dollars (\$100.00). The officers from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) **Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) **Meetings.**
 - (1) **Open to Public.** All meetings and hearings of the Board of Appeals shall be open to the public, except that the Board may go into executive session to deliberate after a hearing or an appeal. The final vote on an appeal shall be taken in open session by roll call vote, recorded and open for public inspection in the Board's office. Public notice of all regular and special meetings shall be given to the public and news media as required by the Wisconsin Open Meeting Law.
 - (2) **Special Meetings.** Special meetings may be called by the Chairman or by the Secretary of the Board of Appeals at the request of two (2) members. Notice of a special meeting shall be mailed to each member at least forty-eight (48) hours prior to the time set for the meeting, or announcement of the meeting shall be made at any meeting at which all members are present.
 - (3) **Hearings.** Hearings may be held at any regular or special meeting at the time set by the Chairman.
 - (4) **Quorum.** A quorum for any meeting or hearing shall consist of four (4) members, but a lesser number may meet and adjourn to a specified time.
- (d) **Powers of Zoning Board of Appeals.** In addition to these powers enumerated elsewhere in this Code of Ordinances, the Board of Appeals shall have the following powers:

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- (1) **Errors.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Land Use and Development Director, Department of Inspection or other administrative official in the enforcement of the Zoning Code or any Ordinance adopted under Sec. 62.23 or 62.231 (Wetlands), 87.30 or 144.26 (Flood Plains) or Chapter 91 (Farmland Preservation), Wis. Stats.
 - (2) **Variances.** To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured.
 - (3) **Interpretations.** To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (4) **Substitutions.** To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (5) **Unclassified Uses.** To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the Plan Commission has made a review and recommendation.
 - (6) **Temporary Uses.** To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses and the Plan Commission has made a review and recommendation. The permit shall be temporary, revocable, subject to any condition required by the Board of Zoning Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.
- (e) **Board Action.** In exercising the powers under Subsection (d), the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.
- (f) **Voting.**
- (1) **Personal Interest.** No Board of Appeals member shall participate in the decision of or vote upon any case in which the member is financially interested, directly or indirectly, but the Chairman shall direct an alternate member to act instead. Disqualification of a member for interest shall not decrease the number of votes required for acting upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.
 - (2) **Record of Vote.** The Secretary shall record the vote of each member on every question in the minutes or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.

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Sec. 13-8-41 Applications for Hearings

- (a) **Time of Appeal.** Appeals shall be filed within thirty (30) days after the date of receipt of the written decision or order from which the appeal is taken by filing in duplicate a notice of appeal with the Land Use and Development Director. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
- (b) **Who May Appeal.** Appeals or applications to the Board may be made by:
 - (1) The owner, mortgagee, purchaser under a land contract, optionee or occupant under a written lease for one (1) year or more of the property for which relief is sought.
 - (2) Any officer (other than the Land Use and Development Director), department, board or bureau affected by a decision or order of the Land Use and Development Director.
 - (3) Any person aggrieved and whose use and enjoyment of property within the City is directly and adversely affected by a decision or order of the Department of Inspection, Land Use and Development Director or the requested Board action.
- (c) **Appeal and Application Forms.** Every appeal or application shall be made upon forms furnished by the Land Use and Development Director, which have been approved by the Board of Appeals. A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chairman or Secretary of the Board of Appeals which is necessary to inform the Board of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application.
- (d) **Filing Appeal or Application.** The appellant or applicant shall file the required appeal form in duplicate with the Land Use and Development Director. The Land Use and Development Director shall deliver one (1) copy to the officer or body from whose decision an appeal is taken. Upon receipt of an appeal, the Land Use and Development Director or other officer or body responsible for the original determination shall transmit to the Secretary of the Board of Appeals all notes or papers relating to the order or decision from which the appeal is being taken.
- (e) **Election to Have Appeal or Application Handled as a Contested Case.** The applicant or appellant may elect to have the appeal or application handled as a contested case. The appeal or application form shall explain that a contested case includes the right of all parties to cross-examine witnesses, to object to improper evidence and to have a record of the proceedings made by a court reporter or qualified stenographer or by tape recording. Election to have the matter treated as a contested case must be made in writing at the time of filing of the appeal or application.
- (f) **Fee.** All appeals and applications filed with the Land Use and Development Director shall be accompanied by payment of a required fee of One Hundred Dollars (\$100.00). If the appellant or applicant elects the contested-case method, he or she shall also pay the amount determined by the Board of Appeals to cover the additional administrative costs involved.

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- (g) **Insufficient Notice.** No appeal or application shall be considered by the Board of Appeals unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the Land Use and Development Director shall supply the applicant with the proper forms, which must be filed within ten (10) days, in addition to the thirty (30) days specified in Subsection (a), in order to be considered by the Board of Appeals.

Sec. 13-8-42 Hearings.

- (a) **Notice of Hearing.** Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:
 - (1) By mail or personal service to the appellant or applicant and to the Land Use and Development Director or other administrative official or body from whose decision an appeal is taken and Secretary of the Plan Commission not less than ten (10) days prior to the date of the hearing.
 - (2) In every case involving a variance, conditional use, exception, planned unit development or public utility exception, the City Clerk shall mail notice to the owners of record of all land within the area included in the application and within two hundred (200) feet of any part of the building or premises affected not less than ten (10) days prior to the hearing. Names and last-known addresses of such owners shall be furnished by the applicant at the time of filing the appeal or application.
 - (3) By publication of a Class 2 Notice under Chapter 985, Wis. Stats.
 - (4) Notice of an application for construction of a building in the bed of a future street, highway or parkway shall be published in the official newspaper not less than fifteen (15) days prior to the hearing.
 - (5) Notice of an application for a proposed special exception in a Shoreland-Wetland District shall be mailed to the district office of the Wisconsin Department of Natural Resources at least ten (10) days prior to the hearing.
- (b) **Time of Hearing, Docketing.** Each appeal or application properly filed shall be numbered serially, docketed in a special book provided therefore and placed upon the calendar by the Secretary of the Board of Appeals. Cases docketed more than fifteen (15) days preceding a regular meeting shall be set for hearing at such meeting. Cases docketed seven (7) days or less prior to a regular meeting shall be scheduled by the Secretary, or his designee, for a hearing on the second regular meeting day thereafter unless otherwise directed by the Chairman.
- (c) **Appearances.** The appellant or applicant may appear in person or by his agent or attorney. In the absence of an appearance for or against an appeal or application, the Board of Appeals may dismiss the appeal or application or may dispose of the matter on the record before it.
- (d) **Oath.** Unless waived by the appellant or applicant and the Chairman, all witnesses shall be sworn before testifying by the Chairman or presiding officer.
- (e) **Compelling Attendance of Witnesses.** The Chairman, or, in his absence, the presiding officer, may compel the attendance of witnesses by subpoena.

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Written request for subpoenas shall be filed with the Secretary of the Board of Appeals not less than two (2) days prior to the hearing except by special permission of the Chairman.

- (f) **Order of Hearing.** Appeals and applications shall be heard in numerical order except for good cause shown.
- (g) **Order of Business.**
 - (1) **General Hearing.** At the hearing, the order of business shall be as follows:
 - a. Statement of the nature of the case by the Chairman.
 - b. Appellant's side of the case.
 - c. Questions by Board members.
 - d. Land Use and Development Directors side of the case.
 - e. Questions by Board members.
 - f. Statements by interested persons such as neighbors or abutting landowners.
 - g. Questions by Board members.
 - h. Appellant's or applicant's rebuttal.
 - (2) **Contested Cases.** If the applicant or appellant elects to have his or her appeal or application treated as a contested case, the order of business shall be as follows:
 - a. Call to order by the Chairman.
 - b. Appellant or applicant's opening statement.
 - c. Land Use and Development Directors opening statement.
 - d. Opening statement of person(s) aggrieved and other interested parties. The right to make an opening statement is limited to persons who will present evidence.
 - e. Applicant's or appellant's case-in-chief.
 - f. Questions by Board members.
 - g. Cross-examination. No more than one (1) person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross-examine.
 - h. Land Use and Development Directors case-in-chief.
 - i. Questions by Board members.
 - j. Cross-examination as under (2)g.
 - k. Case-in-chief of other parties.
 - l. Questions by Board members.
 - m. Cross-examination under (2)g.
 - n. Rebuttal by appellant or applicant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.
 - o. Statements of opinion of neighbors or abutting land owners -- not subject to cross-examination.
 - p. Closing statements of those who made or waived opening statements.
- (h) **Evidence and Official Notice.** Except in contested case hearings, written and oral testimony will be received. In contested case hearings, no hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination. The Board of Appeals may take official notice of the Ordinances of the City, the zoning and location of the subject property and geographical features or other facts, which are common knowledge in the City or can be verified by reference to public record. In contested case hearings, all witnesses shall be sworn and no person shall be permitted to

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testify unless he or she submits to cross-examination. See Sec. 227.08, Wis. Stats.

- (i) **Adjournments.** When all appeals or applications cannot be disposed of on the day set, the Board of Appeals may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board of Appeals.
- (j) **Withdrawal.** An appellant or applicant may withdraw an appeal at any time prior to the decision, but a pending motion to grant or dismiss the appeal shall have precedence over withdrawal. Withdrawal of the appeal shall not entitle the appellant or applicant to remission of the filing fee.

Sec. 13-8-43 Decision and Disposition of Cases.

- (a) **Time of Decision.** The Board of Appeals shall render its decision either at the termination of the hearing or within thirty (30) days thereafter and shall notify the parties in interest and the Land Use and Development Director in writing of its decision.
- (b) **Form of Decision.** The final disposition of an appeal or application shall be in the form of a written decision or order signed by the Chairman and Secretary of the Board of Appeals. Such decision shall state the reasons for the Board's determination with findings of fact and conclusions of law and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal or grant or deny the special exception, conditional use or variance.
- (c) **Basis of Decision; Findings.** At the conclusion of a hearing, the Board should reduce to writing its findings of fact and conclusions of law regarding the proper interpretation and application of the Zoning Code.
- (d) **Vote Required.** All orders or decisions of the Board of Appeals granting a variance, exception or conditional use or reversing any action or order of the administrator require the affirmative vote of four (4) members. Whenever only four (4) members of the Board are present and the vote stands three (3) to one (1) in favor of the appellant or applicant, the matter shall be laid over for consideration and final determination at the next meeting of the Board or a special meeting noticed and called for that purpose.
- (e) **Conditions.** Variances or conditions imposed in any permit shall be stated in the decision or order embodying the Board's decision and shall also be set forth in the building, conditional use or occupancy permit issued under that order by the Land Use and Development Director. A permit shall be valid only as long as the conditions upon which it is granted are observed. Whenever the Board grants an application or appeal affecting the use of any premises, such authorization shall be deemed revoked unless the owner, occupant or his agent shall, upon request, file with the Board Secretary a written report certifying that all conditions or limitations imposed by the Board have been conformed to and maintained. Variances, substitutions or conditional use permits approved by the Board shall expire six (6) months after issuance if the performance of work is required and substantial work has not commenced.
- (f) **Filing of Decision.** Every order or decision of the Board of Appeals shall be immediately filed with the Secretary who shall thereupon forward the decision to the Land Use and Development Director and mail a copy to the

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applicant or appellant. Copies of decisions granting conditional uses or variances in a floodplain, shoreland or wetland district shall be mailed to the district office of the Wisconsin Department of Natural Resources.

(g) **Reconsideration.**

- (1) **Resubmission.** No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one (1) year of the Board's decision, except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in Subsection (g)(2) below.
- (2) **Rehearing.** No rehearing shall be held except upon the affirmative vote of four (4) or more members of the Board upon finding that substantial, new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for rehearing shall be in writing, shall state the reasons for the request and shall be accompanied by necessary data and diagrams. Rehearings shall be subject to the same notice requirements as original hearings.

Sec. 13-8-44 Variations.

(a) **Purpose.**

- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
 - (2) The Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.
 - (3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the Zoning District which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same Zoning District.
- (b) **Application for Variation.** The application for variation shall be filed pursuant to Section 13-8-41.
- (c) **Public Hearing of Application.** The public hearing for a variance shall be conducted pursuant to Section 13-8-42.
- (d) **Prohibited Variances.** The Board of Appeals shall not grant use variances in floodplain or wetland and conservancy districts. In all other districts, no use variance shall be granted unless the applicant has first petitioned for a Zoning Amendment or a Conditional Use Permit, if applicable, and upon a showing

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that no lawful and feasible use of the subject property can be made in the absence of such variance. Any use variance granted shall be limited to the specific use described in the Boards decision and shall not permit variances in yard, area or other requirements of the district in which located.

- (e) **Action of the Board of Appeals; Standards.** For the Board to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to physiographical consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
 - (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
 - (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
 - (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code, specifically the standards of Section 13-5-77.
- (f) **Conditions.** The Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.

Sec. 13-8-45 Review by Court of Record.

Any person or persons aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board of Appeals.

Sec. 13-8-46 through Sec. 13-8-50

Reserved for Future Use.