

## APPENDIX I

### BOARD OF ADJUSTMENT – Rules and Procedure

#### ARTICLE I. GENERAL PROVISIONS

##### SECTION 1. AUTHORITY

This Board has been established pursuant to Section 59.99 of the Wisconsin Statutes and Section 14.2600 of the Oconto County Zoning Ordinance, and assumes thereby, all responsibilities, duties and powers as provided therein. These rules are supplementary to the provisions of the Zoning Ordinance as they relate to the procedures of the Board of Adjustment.

##### SECTION 2. MEMBERSHIP

This Board shall consist of five (5) members as provided for within the zoning ordinance.

##### SECTION 3. CONFLICTS OF INTEREST

Any member of the Board, who has any direct or indirect interest, personal or financial, in a matter before the Board shall not vote thereon or participate in the deliberation of such matter at any meeting or hearing at which said matter is under consideration. A disqualifying conflict of interest shall be deemed to exist when:

- (a) The Board member is the applicant or spouse of the applicant, or is related to the applicant, or is the husband or wife of someone so related.
- (b) The corporation in which the member is a major shareholder or has a major financial interest.
- (c) The member owns property within 300 feet of the property which is the subject of the application.

##### SECTION 4. LIMITATIONS

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

##### SECTION 5. BOARD'S OFFICE

The office of the Board shall be located at the Oconto County Courthouse within the office of the Zoning Administrator. All records of the Board shall be available for public inspection between the hours of 8AM and 4PM, Monday through Friday, except for legal holidays.

#### ARTICLE II. OFFICERS AND DUTIES

##### SECTION 1. OFFICERS

The Board shall elect a Chairperson, Vice-Chairperson and Secretary from among its members at the annual organization meeting in July. These officers shall hold office for one year, or until their successors are elected. The Board may, at any meeting or hearing, elect from among the membership the replacement for an officer, who dies or for whatever reason is unable to perform the duties of his office. The officer, so elected as a replacement, shall serve until the next organizational meeting of the Board.

## SECTION 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. In the absence of both the Chairperson and Vice-Chairperson, the members shall appoint a Chair. The Chairperson shall report on all official transactions, that have not otherwise come to the attention of the Board. The Chairperson shall, subject to these rules and further instructions from the Board, direct the official business of the Board, supervise the work of the Board and request necessary help when required. The Chairperson or the presiding officer, subject to these rules, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and approved.

The Secretary shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of its official actions; shall summarize accurately the testimony of those appearing before the Board and keep a verbatim recording of all hearings; shall record the names and addresses of all persons appearing before the Board in person, or by attorney; and shall, subject to the Board and chairperson, conduct the correspondence of the Board and have published in a local newspaper, public notices of meetings or hearings as required by law and these rules of procedure; shall file said minutes and records in the office of the Board, which minutes and records shall be a public record; and shall be the custodian of the files of the Board and keep all records. The zoning Administrator and Staff shall assist the Secretary of the Board in performing these duties.

The County Corporation Counsel, or designated representative, shall be the legal counsel for the Board. Advice of counsel shall be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation or advice.

## ARTICLE III. MEETINGS

### SECTION 1. TIME: HOW CALLED

Meetings and hearings of the Board shall be held, or may be cancelled at the call of the Chair and at such other times as the Board may determine, provided that all Board members are notified by the Secretary at least 48 hours prior to such meeting. All meetings shall be open to the public and in accordance with the Open Meeting Law, except the Board may call a closed session at the conclusion of any public hearings for the purpose of reaching a decision on the evidence placed before it in the open portion of such hearings. Hearings shall be advertised as required by law and these rules.

### SECTION 2. QUORUM

A quorum shall consist of a majority of all members of the Board (3 members) and no action may be taken except by a majority vote of such quorum except a lesser number may meet and adjourn any meeting duly called and noticed to a time certain.

### SECTION 3. ORDER OF BUSINESS

The Secretary shall prepare an agenda for each Board meeting, listing the matters of business at all meetings that do not have public hearings in the following order:

- (a) Call to order
- (b) Roll Call
- (c) Minutes of Meeting, Date,
- (d) Communications/Correspondence

- (e) Statement in regard to compliance with the Open Meeting Law
- (f) Old Business
  - (1)
  - (2)
- (g) New Business
  - (1)
  - (2)
- (h) Report of the Zoning Administrator
- (i) Next Meeting Date/Adjournment

(Signature) Secretary

The Secretary shall prepare an agenda for each Board meeting that has public hearings, listing the matters of business in the following order:

- (a) Call to Order
- (b) Roll Call
- (c) Public Hearings
  - (1) Name, place, per notice of public hearing and time
  - (2) Second Hearing
  - (3) Third Hearing, etc.

NOTE: The Board of Adjustment MAY, under the provisions of S. 19.85(1)(a) Wisconsin Statutes, move to deliberate concerning ANY of the above quasi-judicial hearings in closed session.

- (d) Minutes of Hearings/Meeting, Date:
- (e) Communications/Correspondence
- (f) Statement in regard to compliance with the Open Meeting Law
- (g) Old Business:
  - (1)
  - (2)
- (h) New Business
  - (1)
  - (2)

- (i) Report of the Zoning Administrator
- (j) Next Meeting Date/Adjournment

(Signature) Secretary

The order of business at any meeting or hearing may be varied from the preceding by consent of the members present, consistent only as pertains to the agenda applying to a single location.

#### SECTION 4. ROBERT'S RULES OF ORDER

Robert's Rules of Order shall govern actions of the Board and conduct of its meetings where not specifically covered by these rules and the zoning ordinances.

### ARTICLE IV. POWERS AND DUTIES OF THE BOARD

#### SECTION 1. GENERAL POWERS

The powers and duties of the Board of adjustment are identified in S.59.99(7) of the Wisconsin Statutes and in S. 26 of the Zoning Ordinance as adopted by the County Board of Supervisors.

#### SECTION 2. SCOPE OF ORDERS

In exercising the powers under Section 1, the board 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 and shall have all powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.

### ARTICLE V. APPLICATIONS AND APPEAL PROCEDURES

#### SECTION 1. WHO MAY FILE

Applications to the Board and appeals from the Zoning Administrator's decisions shall be filed with the Zoning Administrator, by the applicant or appellant, his or her agent or attorney. Appeals may be filed by any person aggrieved or by any officer, department, board or bureau of the County or Town affected by the Zoning Administrator's decision.

#### SECTION 2. COPIES TO BE SENT:

The Zoning Administrator shall promptly transmit copies of the application or appeal as follows:

- (a) Original to the Board of Adjustment
- (b) Copy to the Zoning Administrator's files
- (c) Copy to the applicant or appellant
- (d) In the case of appeals or applications affecting property in shoreland or floodplain districts, one copy shall also be sent to the Wisconsin Department of Natural Resources.

#### SECTION 3. TIME TO APPEAL

Appeals from the Zoning Administrator's decision must be filed within 30 days after the decision in writing is made and filed.

## **SECTION 4. REQUIRED INFORMATION**

Failure of the appellant to supply the required information within 30 days of filing an appeal or application may be considered by the Board as a failure to comply with application and appeal procedure and the case may be dismissed for failure of timely filing. Applications or appeals shall be made on forms provided by the Zoning Administrator. Any communications, except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing.

## **SECTION 5. REASONS TO BE STATED**

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 to appellant:

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

## **SECTION 6. DISMISSAL OF CASE**

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

## **SECTION 7. OWNER'S CONSENT**

The forms shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner acknowledging the filing of the form.

## **SECTION 8. TIME FOR HEARING.**

Each appeal or application shall be considered by the Board at its next meeting, provided there is sufficient time between the date of the appeal and the date of the meeting for the required notices to be published.

## **SECTION 9. NOTICE OF HEARING**

The secretary of the Board shall cause to be given, notice of each hearing as required by the Zoning Ordinance.

## **SECTION 10. EFFECT OF APPEAL**

An appeal shall stay all proceedings and furtherance of the action appealed from as specified by the Zoning Ordinance.

## **SECTION 11. REPRESENTATIVE FILING**

An applicant of appellant may file an appeal or application personally or by an agent or attorney.

## SECTION 12. CONTESTED CASE ELECTION

An 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 application.

NOTE: A contested case hearing shifts the burden to the applicant to object to any evidence which the Board admits and to produce sufficient evidence to support granting of the appeal or application. Hearsay evidence such as letters or staff reports if relevant, is admissible in both standard and contested cases, but in a contested case, the applicant must be given the right to cross-examine the person writing the letter or report as to the contents. Also in a contested case, any member of the audience who wishes to give testimony must be sworn and submit to cross-examination.

## SECTION 13. FEE

Fees shall be as set by the County Board of Supervisors as specified in the Zoning Ordinance.

# ARTICLE VI. PROCEEDING ON HEARINGS

## SECTION 1. APPEARANCES, ADJOURNMENTS

At the time of the hearing, the applicant or appellant may appear in his own behalf or be represented by his counsel or agent. A recess or adjournment of a hearing, made at a noticed hearing date, to a time and place certain is adequate notice to the members and public of a new hearing date.

## SECTION 2. WITNESSES

The Chairperson, or Acting Chairperson, may compel the attendance of witnesses and may require those wishing to testify to state their names and their interests in the matter before the Board. Testimony shall be taken under oath.

## SECTION 3. ORDER OF HEARINGS

Hearings on cases shall normally follow this order:

- (a) Hearing call to order
- (b) Roll Call
- (c) Notice of Public Hearing (Read by Secretary or Zoning Administrator)
- (d) Publication (Statement of publication of notice and distribution)
- (e) Filing (Filing of application, date and information)
- (f) Staff Report (Presented by the Zoning Administrator)
- (g) Appearances:
  - (1) Applicant presents evidence
  - (2) Others in support of applicant present evidence
  - (3) Objectors present evidence

- (4) Rebuttals as permitted by the Board
- (h) Closing of testimony (statement and time)
- (i) Deliberation: Restricted to the Board. No public or staff participation. Board shall find the appropriate facts and conclusions of the law upon which a decision can be made.
- (j) Decision: Board to make appropriate motion, including findings of facts, conclusions of the law, approvals or denials, conditions or statement of hardship for variances.
- (k) Adjournment.

**CONTESTED CASES:** If the applicant or appellant elects to have the appeal of application treated as a contested case, the order of business shall be the same, except:

- (a) An opening statement of persons aggrieved and other interested parties is allowed. (The right to make an opening statement is limited to persons who will present evidence.)
- (b) Cross-examination is allowed. (No more than one person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross-examine.)
- (c) Rebuttal by appellant or applicant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.
- (d) Closing statements of those who made or waived opening statements.

#### **SECTION 4. PRELIMINARY MATTERS**

Following the reading of a notice of appeal or application, 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 the taking of testimony in any event and reserve its determination on a jurisdictional question until after the testimony is closed and render a decision on the merits as if it had jurisdiction. The Board may make an immediate determination and close the hearing upon a finding that it lacks jurisdiction. If the Board determines by motion that it lacks jurisdiction, the Secretary shall record the decision as a vote to deny the request.

#### **SECTION 5. PARTIES NOT TO INTERRUPT**

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

#### **SECTION 6. QUESTIONS AND DEBATE**

During the hearing, the Chairperson, Board members and members of the staff may ask questions and make appropriate comments pertinent to the case, however, no member should debate or argue an issue with the applicant. The Chairperson and Board members may direct any question to the applicant or to any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case and may call for questions from members of the zoning staff.

#### **SECTION 7. PRESENTATION OF EVIDENCE**

All supporting evidence for or against each case shall be presented to the assembled Board. The applicant or appellant shall be responsible for the presentation of all information supporting the case. The Board may take administrative notice of the ordinances of the County and laws of the State of Wisconsin and of other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

## **SECTION 8. ADDITIONAL EVIDENCE**

The Board may take a case under advisement for later consideration and determination, or may defer action whenever it concludes that additional evidence is needed or further study is required.

## **SECTION 9. POSTPONEMENT OF HEARING**

Cases may be postponed only by prior arrangement with the Secretary.

## **SECTION 10. RULES OF EVIDENCE**

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. In contested case hearings, section 227.08, Wisconsin Statutes shall apply. (Section 227.08 allows admission of all material, relevant and probative evidence, but request the record of the hearing to reflect objections and offers of proof which are excluded by the Board. In addition, in a contested case hearing, all records and documents relied upon by the board, including staff recommendations and reports, must be made a part of the record and every party given an opportunity to rebut the report and documents or to offer countervailing oral or written evidence.)

## **SECTION 11. CHAIRPERSON TO RULE ON ADMISSIBILITY**

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

## **SECTION 12. INTERESTED PERSONS MAY TESTIFY**

Persons having an interest in the case may attend the hearing and may request an opportunity to testify provided they identify themselves and sign an appearance card of persons attending the hearing. All testimony shall be under oath.

## **SECTION 13. RECORD OF HEARING**

All proceedings at a hearing shall be tape recorded or recorded by a court reporter. The Secretary shall prepare a summary of motions, witnesses, appearances, roll calls, votes and all other matters constituting the substance of the proceedings which shall be submitted to the Board for review and approval and shall become part of the written record filed in the office of the Board and open to the public. Transcripts of recorded proceedings shall not be prepared unless ordered by the circuit court by a writ of certiorari. Any party or member of the public may make a record of the proceeding by any means which does not disturb the hearing or others present.

## **SECTION 14. ADJOURNMENTS**

When all appeals or applications cannot be disposed of on a day set, the Board 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.

## **SECTION 15. WITHDRAWAL OF APPEAL**

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.

## ARTICLE VII. DECISION OF THE BOARD

### SECTION 1. MAJORITY VOTE REQUIRED

The concurring vote of a majority of all members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, to decide in favor of the applicant or any matter upon which it is required to pass under any zoning ordinance or to effect any variance.

### SECTION 2. DECISIONS TO BE WRITTEN

All decisions shall be in writing and contain the findings of facts and conclusions of law upon which the decision is based.

### SECTION 3. DECISIONS TO BE MAILED

Within 30 days of the close of the hearing to which the decision relates, written copies of such decision shall be mailed to the applicant and all interested parties and delivered to the Zoning Administrator. The approval or granting of appeals by the Board is deemed to constitute an order to the Zoning Administrator to issue a zoning permit. A denial of the application or appeal by the Board is deemed to be an order to deny the permit. Copies of written decisions authorizing conditional use permits or variances in floodplain shall be mailed to the Wisconsin Department of Natural Resources.

### SECTION 4. FINDINGS

In acting on any matter before it, the Board shall make findings supporting its actions. In every case where a variance from the zoning ordinance is granted by the Board, the minutes of the Board shall affirmatively show that an unnecessary hardship exist and the records of the Board shall clearly show in what particular and specific respects and unnecessary hardship is created.

### SECTION 5. DISQUALIFICATION, MOTIONS

A member may disqualify himself (herself) from voting whenever the member has a personal or monetary interest in the property concerning the case, will be directly affected by the decision of the Board, has or believes he/she has any conflict or interest under state statutes. A member may also disqualify himself/herself from voting whenever the applicant or the applicant's agent has sought to influence the vote of the member on his/her case outside the public hearing. All decisions of the Board shall be made at a public meeting, by motion made, seconded and passed. A motion which decides the issue shall be in the form of a findings of fact and conclusion of law and shall state the reasons for the findings by the Board. If conditions are imposed in the granting of a variance, or conditional use, such conditions shall be included in the motion.

### SECTION 6. DECISION TO RELATE TO SPECIFIC PROPERTY

The decision of the Board shall be deemed as applying to the property rather than to the individual and is valid only for the specific premises in the case and is not transferable to other properties.

### SECTION 7. INFORMAL ADVICE NOT BINDING

No informal request for advice or on moot questions need be given by the Board. Any advice, opinion or information given by any Board member, the Board Secretary, or any other official or other employee of the County shall not be binding on the Board.

### SECTION 8. CASES TO BE DETERMINED INDIVIDUALLY

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

## **SECTION 9. ORDER FOR PERMIT, VALIDITY**

Any order issued by the Board requiring the Zoning Administrator to issue a permit shall comply with the appropriate provisions of the zoning ordinance.

## **SECTION 10. DECISIONS TO BE FILED WITH STATE**

Decisions on floodplain and shoreland-wetland zoning appeals, variances and conditional uses shall be sent to the district office of the Wisconsin Department of Natural Resources.

## **SECTION 11. ACTION IN CIRCUIT COURT**

Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the County may commence an action in the circuit court for writ of certiorari to review the legality of such decision in whole or in part, within thirty days after the filing of the decision in the office of the Board.

# **ARTICLE VIII. REFILINGS AND REHEARINGS**

## **SECTION 1. ONE YEAR REFILING RULE**

No matter which has been acted upon by the Board shall be considered again within one year from the date of action, except as hereinafter provided.

## **SECTION 2. EXCEPTION TO ONE YEAR RULE**

The Board may hear cases within said one year period concerning the same property only when:

- (a) The case does not involve a request for an identical permit or does not allege the same misinterpretation or error.
- (b) The case does not contain the original request for specific variance.
- (c) Substantial change in the use of adjacent property has occurred since the previous case was heard.
- (d) The previous case was closed without a hearing because the applicant was not present at the time such case was scheduled for a hearing.

## **SECTION 3. REOPENINGS AND REHEARINGS LIMITED**

The Board may:

- (a) Not reopen any case upon which a previous hearing has been held, except to correct a manifest error; but it may reconsider a case as provided by these rules.
- (b) Hear or rehear any case to determine the location of any district boundary line where the Board has previously determined the location of such boundary line, unless new evidence is submitted.

## **SECTION 4. CLOSURE OF CASE**

A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion or when it is considered closed by operation of these rules.

## **SECTION 5. RECONSIDERATION ON BOARD MOTION**

A decision of the Board may be reconsidered:

- (a) By motion to reconsider made at the same hearing which may be immediately disposed of without further notice.
- (b) By motion to reconsider made not later than the following regular meeting, in which event the minutes have not been approved, and the matter shall be placed on the agenda for the subsequent hearing and a new notice given without additional fee.

## **SECTION 6. RECONSIDERATION BY REQUEST**

The Board may entertain a request for reconsideration by a party in interest provided the request is in writing and new written evidence is submitted with the request. On receipt of a properly filed request to reconsider, the Secretary shall place the matter on the next agenda for consideration. A request for reconsideration must be filed with the Secretary at least 30 days prior to the next regular meeting/hearing date.

## **SECTION 7. RECONSIDERATION TOLLS APPEAL PERIOD**

The filing of a request or adoption of a motion for reconsideration shall stop the running of the 30 day period in which a petition to the circuit court must be made. The 30 day period will run in such event from the date a decision no 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 Board's office.

## **SECTION 8. PROCEDURES FOR RECONSIDERATION**

A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused to an interested party who has requested a reconsideration, the Board shall enter on the minutes the basis of the request, the reason why it was refused and the vote of the Board members thereon. If reconsideration is approved, the case will be placed on the agenda for the next regular meeting/hearing and notice given as required for an original hearing upon payment of the re-hearing fee.

## **ARTICLE IX. AMENDMENT OF RULES**

These rules may be changed or amended from time to time in the same manner and as amendments to the Zoning Ordinance.

## **ARTICLE X. ANNUAL REPORT**

Annually, at the February County Board meeting, the Board of Adjustment shall submit a report of its activities for the preceding year.

## **ARTICLE XI. STAFF**

The Board of Adjustment may utilize the advice and assistance of the County Zoning staff and may delegate administrative tasks to such staff or to other county employees as authorized by the County Board of Supervisors.

## **ARTICLE XII. ADOPTION**

The foregoing rules and regulations are hereby adopted by the County Board of Supervisors as a part herein of the Oconto County Zoning Ordinance.