

SECTION 7.0 – BOARD OF ADJUSTMENT

7.1 Establishment

There is hereby established a Board of Adjustment for the Town for the purposes set forth in this Section.

7.2 Membership and Organization

The Board of Adjustment shall be formed and organized as follows:

- (1) The Board shall consist of three members appointed by the Town Chairperson and confirmed by the Town Board.
- (2) The terms of members shall be for staggered three-year periods.
- (3) The Chairperson of the Board shall be elected annually by the Board from among its members.
- (4) An alternate member may be appointed by the Town Chairperson for a term of three years and shall act only when a regular member is absent or does not participate due to a conflict of interest.
- (5) No member of the Board of Adjustment may simultaneously be a member of the Town Board or the Planning & Zoning Committee, and the Zoning Officer shall not be a member of the Board, although he or she shall attend all meetings of the Board for the purpose of providing technical assistance when requested by the Board.
- (6) The Chairperson of the Board shall appoint a member of the Board as Secretary.
- (7) Vacancies in the Board shall be filled for an unexpired term in the same manner as appointments for a full term.
- (8) Each member of the Board shall take an official oath in accordance with Section 19.01 of the Wisconsin Statutes within 10 days of receiving notice of appointment.
- (9) Compensation for Board Members shall be determined by the Town Board.
- (10) Any member of the Board who has any interest in a matter before the Board shall not vote thereon and shall remove himself or herself from any meeting or hearing at which said matter is under consideration.

7.3 Administration

The Board of Adjustment shall administer itself in accordance with the following:

- (1) All meetings shall be held at the call of the Chairperson and shall be open to the public.
- (2) Minutes of the proceedings and a record of all actions shall be kept by the Secretary, showing the vote of each member upon each question, and recording the absence or abstention of any member, and further recording the reasons for any determination by the Board and findings of fact related to such determination. The Secretary shall keep all records of the Board, which shall be immediately filed with the Town Clerk upon creation of such records.
- (3) The Board may request assistance from other town and county officials, departments, agencies, and boards in rendering any decision under this Section.

7.4 Powers

The Board of Adjustment shall have the power to hear requests for variances subject to the requirements of this Section.

7.5 Variances

- (1) An application for a variance from the provisions of this Chapter may be made by the owner or lessee of any structure, land, or water affected by this Chapter. Such application shall be filed with the Town Clerk and shall include the following:
 - (A) Name and address of the applicant and, if such application relates to a specific parcel, all owners of property located within 400 feet of the subject property.
 - (B) Such additional information as may be required by the Board or the Zoning Officer, which may include a plat of survey.
 - (C) Fee receipt from the Town Clerk. The fee for applications hereunder shall be \$350 or such other amount as shall hereafter be set by Town Board resolution.

- (2) Variances may only be granted subject to the following restrictions:
- (A) A variance from a zoning regulation may be issued only when the literal application of the regulation would result in unnecessary hardship not justified by the underlying purposes of this Chapter.
 - (B) The hardship must be based on conditions unique to the property rather than considerations personal to the property owner.
 - (C) The hardship may not be self-created.
 - (D) The board of adjustment shall evaluate the hardship in light of the purpose of the zoning restriction at issue.
 - (E) A variance may not be contrary to the public interest.
 - (F) The property owner requesting a variance bears the burden of proving unnecessary hardship.
 - (G) "Unnecessary hardship" in the case of a use variance is established only when, in the absence of a variance, no reasonable or feasible use can be made of the property. A use variance is one that permits a use other than that prescribed by this Chapter in a particular district.
 - (H) When considering an area variance, the question of whether unnecessary hardship exists is one of whether 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. An area variance has no relationship to a change of use. An area variance is a variance that would allow the erection or alteration of a structure in a manner other than permitted by this chapter.
 - (I) The variance may not subvert the purpose of the zoning restriction in question.

(This subsection amended by Ordinance 120713A)

7.6 Hearing

The Board of Adjustment shall hold a public hearing within 45 days of receiving an

application, shall give public notice thereof at least 10 days prior to the hearing by publication of a Class 1 Notice under Chapter 985 of the Wisconsin Statutes, and shall give due notice to all parties in interest, the Zoning Officer, and the Planning & Zoning Committee. If the application relates to a specific parcel, "parties in interest" shall include all owners of property located within 400 feet of the subject property. At the hearing the or applicant shall appear in person, by agent, or by attorney. Following or preceding the public hearing the Board may, in its discretion, hold additional hearings, allowing the participation of only the applicant and such other parties as may hold a direct interest in the subject matter of the application. The Chairperson shall administer oaths to all persons providing factual testimony to the Board and may compel the attendance of witnesses.

7.7 Required Attendance

The applicant or the or applicant's authorized legal representative shall attend the public hearing as well as all other meetings of the Board of Adjustment in connection with the applicant's application. Failure of the applicant or the applicant's authorized legal representative to attend such public hearing or other meetings shall be grounds for denial of the applicant's application.

7.8 Decision

The Board of Adjustment shall decide all and applications within 30 days after the final hearing and shall transmit a signed copy of its decision to the applicant, the Zoning Officer, and the Planning & Zoning Committee. Such decision shall be accompanied by findings of fact and conclusions of law and may include any conditions placed upon the issuance of any permit. Any variance, zoning permit, or building permit granted by the Board shall expire six months following the issuance of the decision unless substantial work has commenced consistent with such variance, zoning permit, or building permit prior to such expiration.