

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 following powers:

- (1) To hear and decide appeals relating to any alleged error in any order, requirement, decision, or determination made by the Planning & Zoning Committee or its delegates or the Zoning Officer in the enforcement of codes, regulations, or ordinances under their jurisdiction, including, but not limited to, decisions granting or denying the issuance of a permit. The Board may reverse, affirm in whole or in part, or modify the conditions established by the Planning & Zoning Committee for issuance of a permit, and may direct the issuance of a permit.
- (2) To hear requests for variances and to grant variances subject to the requirements of this Section.
- (3) To hear and decide applications for interpretation of this Chapter, provided that no decision on an interpretation shall be made until after the matter has been reviewed by the Planning & Zoning Committee and the Board has received the recommendations of the Planning & Zoning Committee.

7.5 Appeals

Appeals from the decision of the Planning & Zoning Committee or its delegates, the Zoning Officer, or any other officer of the Town concerning the enforcement of this Chapter or the issuance or denial of a Zoning Permit or Building Permit may be made by any person aggrieved by such decision or by an officer, department, committee, board, or bureau of the Town. Any such appeal shall be filed with the Town Clerk within 30 days after the date of written notice of the decision or order appealed from. Such appeal shall include the following:

- (1) Name and address of the appellant and, if such appeal relates to a specific parcel of land, all owners of land located within 400 feet of the subject parcel.

- (2) Such additional information as may be required by the Board or the Zoning Officer, which may include a plat of survey.
- (3) Fee receipt from the Town Clerk. The fee for appeals shall be \$350 or such other amount as shall hereafter be set by Town Board resolution.

7.6 Applications for Interpretation

Applications for interpretation of any portion 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:

- (1) 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.
- (2) Such additional information as may be required by the Board or the Zoning Officer, which may include a plat of survey.
- (3) 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.

7.7 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) Variances shall not be granted routinely, and shall be granted only when the applicant clearly shows the existence of an unnecessary hardship and the presence of a unique property limitation, and further shows that the granting of the variance will not be contrary to the public interest.
 - (B) No use variance shall be granted.

- (C) An unnecessary hardship may be shown only where, in the absence of a variance, the applicant can make no feasible use of the subject property, or if strict conformity is unnecessarily burdensome.
- (D) No variance shall be granted if the physical character of the property allows the applicant to build or develop in a manner which complies with this Chapter.
- (E) Any unnecessary hardship must be peculiar to the zoning parcel in question and different from that of other parcels, and not one that affects all parcels similarly. Such hardships must arise because of some unique property limitation, or because the property was created before the passage of this Zoning Ordinance.
- (F) Loss of profit or pecuniary hardship is not in and of itself grounds for a variance.
- (G) Self-imposed hardship is not grounds for a variance. Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, deed restrictions imposed by previous owners, and improvements made in violation of this Chapter are generally considered to be self-imposed hardships.
- (H) An unnecessary hardship cannot be one which would have existed in the absence of a zoning ordinance, although a legitimate unnecessary hardship may result from the interaction of the provisions of this Chapter with other actions or regulations adopted by public authorities.
- (I) A unique property limitation for purposes of this Chapter shall involve a situation in which unique physical characteristics of the property, and not the desires of or conditions personal to the applicant, prevent the applicant from developing in accordance with this Chapter. Unique property limitations may include wetlands, soil types, parcel shapes, or steep slopes.
- (J) In order to protect the public interest, the Board shall not grant a variance which would undermine the purpose of this Chapter. The Board shall consult the “purpose” and “intent” sections of this Chapter in determining whether a variance is appropriate, and shall consider the interests of the public at large, not only the interests of the nearby property owners.
- (K) Lack of opposition does not in itself mean that a proposed variance will not harm the public interest.
- (L) In granting a variance the Board may impose special conditions to ensure that the public welfare is not damaged, provided that such conditions must relate reasonably to the purpose and intent established in this Chapter.

- (M) A variance should include only the minimum relief necessary to allow reasonable use of the subject property.
 - (N) Violations by or variances granted to a neighboring owner do not justify the granting of a variance.
 - (O) Any variance granted shall attach to the property as a permanent right, and any subsequent owner of the subject property may make use of that variance, provided that all conditions attached to the variance are met.
 - (P) In order to grant a variance, the Board must determine that there are exceptional, extraordinary, or unusual circumstances or conditions applying to the subject lot, parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district, and that the granting of the variance would not be so general or recurrent in nature as to suggest that this Chapter should be modified.
 - (Q) No variance shall be granted unless the Board determines that the granting will not create a substantial detriment to adjacent property.
- (3) The Board of Adjustment is not authorized to grant a variance from the State requirements related to livestock facility siting, except as provided in Section 93.90 of the Wisconsin Statutes and in Chapter ATCP 51 of the Wisconsin Administrative Code.

(Subsection (3) Created by Ordinance 100206)

7.8 Hearing

The Board of Adjustment shall hold a public hearing within 45 days of receiving an appeal or 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 appeal or 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 appellant 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 appeal or application. The Chairperson shall administer oaths to all persons providing factual testimony to the Board and may compel the attendance of witnesses.

7.9 Required Attendance

The appellant or applicant or the appellant’s 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 appellant’s or applicant’s appeal or application. Failure of the appellant or applicant or the appellant’s or applicant’s authorized legal representative to

attend such public hearing or other meetings shall be grounds for denial of the appellant's or applicant's appeal or application.

7.10 Decision

The Board of Adjustment shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of its decision to the appellant or 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.